

**DRAFT AMENDMENTS TO THE
SECURITIES AND FUTURES ACT (SFA)**

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SECURITIES AND FUTURES ACT

(CHAPTER 289)

(Act 42 of 2001)

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

PART I

PRELIMINARY

Short title

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

Interpretation

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

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

“advocate and solicitor” means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 2(1) of the Legal Profession Act (Cap. 161);

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

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

“approved exchange” means a corporation that is approved by the Authority under section 8(1) as an approved exchange;

“approved holding company” means a corporation that is approved by the Authority under section 81W as an approved holding company;

“auditor” means a public accountant who is registered or deemed to be registered under the Accountants Act (Cap. 2) and, in Divisions 1 and 1A of Part XIII, when used in relation to an entity not being a company, includes —

- (a) a person who is duly registered, licensed, approved or otherwise authorised to practise as an auditor (such practice to include the issue of any opinion, report or other document on the audit of any financial statement) —

- (i) under the laws of the place where the entity is formed or constituted; or
- (ii) under the laws of the place of his practice, if the auditing standards that are or will be applied to the financial statements of the entity are —
 - (A) auditing standards commonly applied in that place; or
 - (B) international auditing standards (by whatever name called); or
- (b) such other person as may be approved by the Authority in any particular case to be an auditor for such entity;

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

“book” includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

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

(a) the approved holding company, ~~securities exchange, futures~~ approved exchange, recognised market operator, approved clearing house or recognised clearing house and its members, or the licensed trade repository or licensed foreign trade repository and its participants; and

(b) other persons in relation to it,

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

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

“capital markets products” means any securities, ~~futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements for the purposes of leveraged foreign exchange trading~~ unit in a collective investment scheme, derivative contract, spot foreign exchange contract for the purposes of leveraged foreign exchange trading, and such other

products as the Authority may prescribe as capital markets products by regulations made under section 341 for the purposes of this paragraph;

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

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

“chief executive officer” —

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

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

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

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

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

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

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

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

~~—— (i) which is a trust;~~

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

- ~~— (iii) all or any units of which are listed for quotation on a securities exchange; or~~
- ~~— (b) an arrangement referred to in paragraph (a) of that definition which is, or which belongs to a class or description of arrangements which is, specified by the Authority, by notification published in the *Gazette*, to be an arrangement that is not a closed end fund, or a class or description of arrangements that are not closed end funds, as the case may be;~~

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

“collective investment scheme” means —

(a) an arrangement in respect of any property —

(i) under which —

(A) the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and

(B) the property is managed as a whole by or on behalf of a manager;

(ii) under which the contributions of the participants and the profits or income from which payments are to be made to them are pooled; and

(iii) the purpose or effect, or purported purpose or effect, of which is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —

(A) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or

(B) to receive sums paid out of such profits, income, or other payments or returns; or

(b) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice published in the *Gazette*,

but does not include —

(i) an arrangement operated by a person otherwise than by way of business;

- (ii) an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;
- (iii) an arrangement under which each of the participants is a related corporation of the manager;
- (iv) an arrangement made by or on behalf of an entity solely for the benefit of persons, each of whom is —
 - (A) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of that entity or, where that entity is a corporation, a related corporation of that entity; or
 - (B) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (iva) an arrangement made by or on behalf of 2 or more entities solely for the benefit of persons, each of whom is —
 - (A) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of any of those entities or, where any of those entities is a corporation, a related corporation of the entity which is a corporation; or
 - (B) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (v) a franchise;
- (vi) an arrangement under which money received by an advocate and solicitor from his client, whether as a stakeholder or otherwise, acting in his professional capacity in the ordinary course of his practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;
- (vii) an arrangement made by any co-operative society registered under the Co-operative Societies Act (Cap. 62) in accordance with the objects thereof solely for the benefit of its members;
- (viii) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act (Cap. 39);
- (ix) an arrangement arising out of a life policy within the meaning of the Insurance Act (Cap. 142);

(x) ~~a closed end fund constituted either as an entity or a trust; an arrangement where all or most of the units issued under the arrangement cannot be redeemed at the election of the holders of units, unless—~~

(A) the arrangement is constituted as a trust which invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any units of which are listed for quotation on an approved exchange; or

(B) the arrangement has all of the following characteristics —

(BA) the arrangement is constituted as an entity or a trust on or after 1 July 2013;

(BB) under the investment policy of the arrangement, investments are made for the purpose of giving participants in the arrangement the benefit of the results of the investments, and not for the purpose of operating a business;

(BC) the arrangement has one or more of the following characteristics —

(BCA) the investment policy of the arrangement is clearly set out in a document that is provided to each participant in the arrangement before, or at the time, the participant invests in the arrangement;

(BCB) there is a contractual relationship between the entity in which the investments are made and every participant in the arrangement, which requires the entity to comply with the investment policy, as amended from time to time, of the arrangement;

(BCC) the investment policy of the arrangement sets out the types of authorised investments, and the investment guidelines or restrictions, that apply to the arrangement;

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

(xii) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice published in the *Gazette*;

~~“commodity” means gold or any produce, item, goods, article, or financial instrument, and includes an index, right or interest in such commodity, other than a financial instrument; and including such other index, right or interest of any nature that is prescribed by as the Authority may by regulations made under section 341 for the purposes of this paragraph; by notification in the *Gazette*, prescribe to be a commodity;~~

but does not include such other index, right or interest of any nature that is prescribed by the Authority under regulations made under section 341 for the purposes of this paragraph;

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

“connected person”, in relation to —

(a) an individual, means —

(i) the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; and

(ii) a firm, a limited liability partnership or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm, limited liability partnership or corporation, whether such control is exercised individually or jointly; or

(b) a firm, a limited liability partnership or a corporation, means another firm, limited liability partnership or corporation in which the first-mentioned firm, limited liability partnership or corporation has control of not less than 20% of the voting power in that other firm, limited liability partnership or corporation,

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

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

“customer” means —

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

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

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

~~——(A) for the sale or purchase of securities~~capital markets products;

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

~~——(C) in connection with leveraged foreign exchange trading,~~

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

(b) for the purposes of Part III and the definition of “user”, a person on whose behalf a member of an approved exchange, an approved clearing house or a recognised clearing house, as the case may be, carries on any activity regulated under this Act, but does not include —

- (i) the member, with respect to dealings for the member’s own account;
- (ii) any officer, director, employee or representative of the member; or
- (iii) a related corporation of the member, with respect to accepted instructions to deal for an account belonging to, and maintained wholly for the benefit of, that related corporation;

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

“dealing in capital markets products” has the meaning given to it in the Second Schedule;

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

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

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

“derivative”, in relation to a unit in a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“derivatives contract” means —

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

- ~~(i) a forward contract;~~
- ~~(ii) an option contract;~~
- ~~(iii) a swap contract;~~

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

~~(b) does not include any contract, arrangement or transaction that is, or that belongs to a class of contracts, arrangements or transactions that is,~~

~~prescribed by the Authority by regulations made under section 341 for the purposes of this paragraph;~~

(a) any contract or arrangement where —

(i) a party to the contract or arrangement is, or may be required to, discharge its obligations under the contract or arrangement at some future time; and

(ii) the discharge of its obligations, or the value of the contract or arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part), the value or amount of one or more underlying things; or

(b) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph,

but does not include —

(i) securities;

(ii) spot contracts;

(iii) a deposit as defined in section 4B of the Banking Act (Cap. 19), in a case where the deposit is accepted by a bank licensed under that Act or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);

(iv) a deposit as defined in section 2 of the Finance Companies Act (Cap. 108), in a case where the deposit is accepted by a finance company as defined in that section of that Act;

(v) any contract of insurance in relation to any class of insurance in relation to any class of insurance business specified in section 2(1) of the Insurance Act (Cap. 142); or

(vi) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purposes of this paragraph;

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

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

“exchange-traded derivative contract” means a derivative contract traded in accordance with the business rules or practices of an organised market where the rights or obligations under the contract can be transferred through a purchase or sale transaction on the organised market;

“executive officer”, in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding

company, the holder of a capital markets services licence, or any other corporation, means any person, by whatever name called, who is —

- (a) in the direct employment of, or acting for or by arrangement with, the approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, holder of a capital markets services licence, or other corporation, as the case may be; and
- (b) concerned with or takes part in the management of the approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, holder of a capital markets services licence, or other corporation, as the case may be, on a day-to-day basis;

~~“exempt market operator” means —~~

- ~~— (a) a corporation that is exempted under section 14(2);~~
- ~~— (b) a corporation declared under section 14(8) to be an exempt market operator; or~~
- ~~— (c) a corporation operating a market included in a class of markets in relation to which a declaration under section 14(9) is in force;~~

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

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

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

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

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

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

~~“forward contract” —~~

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

- ~~—— (i) to effect an actual delivery of the underlying thing;~~
- ~~—— (ii) to effect a settlement of any difference in the price or value of the underlying thing or, if the contract relates to 2 or more underlying things, of any difference in the price of one or more of the underlying things; or~~
- ~~—— (iii) to effect a settlement determined with reference to the underlying thing or, if the contract relates to 2 or more underlying things, determined with reference to one or more of the underlying things; but~~
- ~~—— (b) does not include a futures contract;~~

[Act 34 of 2012 wef 01/08/2013]

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

- (a) a party (referred to in this definition as the franchisor) to the agreement or arrangement authorises or permits another party (referred to in this definition as the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;
- (b) the business carried on by the franchisee or the person associated with the franchisee, as the case may be, is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;
- (c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee’s business;
- (d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and
- (e) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

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

~~“futures contract” means —~~

- ~~—— (a) for the purposes of Part I of the First Schedule —~~
 - ~~—— (i) a contract the effect of which is that —~~
 - ~~—— (A) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another~~

~~party at a specified future time and at a specified price payable at that time; or~~

~~—— (B) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time,~~

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

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

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

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

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

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

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

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

“futures contract” means an exchange-traded derivative contract where ——

(a) one party agrees to deliver an underlying thing to another party at a future time and at an agreed price pursuant to the terms and conditions set out in the business rules or practices of the organised market at which the contract is made; or

(b) the parties will discharge their obligations under the derivative contract by settling the difference between the value of an underlying thing agreed at the time of the making of the contract and its value at a future time, such difference being determined in accordance with the business rules or practices of the organised market at which the contract is made,

and includes an option on such exchange-traded derivative contract, which is traded in accordance with the business rules or practices of the organised market and where the rights or obligations under the option can be transferred through a purchase or sale transaction on the organised market.

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

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

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

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

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

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

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

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

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

(a) the admission to the official list of the corporation or overseas ~~securities~~ exchange, of corporations, governments, bodies unincorporate or other persons for the purpose of the quotation on the organised securities market of the corporation or overseas ~~securities~~ exchange of securities, securities-based derivative contracts or units in a collective investment scheme issued, or made available by such corporations, governments, bodies unincorporate or other persons, or the removal from that official list and for other purposes; or

(b) the activities or conduct of corporations, governments, bodies unincorporate and other persons who are admitted to that list,

whether those rules are made —

(i) by the corporation or overseas ~~securities~~ exchange or are contained in any of the constituent documents of the corporation or overseas ~~securities~~ exchange; or

(ii) by another person and adopted by the corporation or overseas securities exchange;

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

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

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

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

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

~~“option contract” —~~

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

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

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

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

~~— (b) does not include any securities;~~

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

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

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

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

“participant” means —

- (a) for the purposes of Part II, a person who may participate in one or more of the services provided by an approved exchange, or a recognised market operator ~~or an exempt market operator~~, in its capacity as an approved exchange, or a recognised market operator ~~or an exempt market operator~~, as the case may be;
- (aa) for the purposes of Part IIA, a person who may participate in one or more of the services provided by a licensed trade repository or licensed foreign trade repository, in its capacity as a licensed trade repository or licensed foreign trade repository, as the case may be;
- (b) for the purposes of Part III, a person who, under the business rules of an approved clearing house or a recognised clearing house, may participate in one or more of the services provided by the approved clearing house or recognised clearing house, in its capacity as an approved clearing house or a recognised clearing house, as the case may be; or
- (c) for the purposes of any other provision of this Act, a person who participates in a collective investment scheme by way of owning one or more units in a collective investment scheme;

“partner” and “manager”, in relation to a limited liability partnership, have the respective meanings assigned to them in section 2(1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

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

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

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

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

“providing custodial services in relation to securities, securities-based derivative contracts and units in a collective investment scheme” ~~for securities~~ has the meaning given to it in the Second Schedule;

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

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

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

“quote”, in relation to securities, securities-based derivative contracts and units in a collective investment scheme, and an organised securities market of an approved exchange or of a recognised market operator, means to display or provide, on the ~~securities~~organised market of the approved exchange or recognised market operator, information concerning the particular prices or particular consideration at which offers or invitations to sell, purchase or exchange ~~issued or prescribed securities~~, securities-based derivative contracts or units in a collective investment scheme are made on that ~~securities~~organised market, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange ~~issued or prescribed securities~~;

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

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

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

“recognised market operator” means a corporation that is recognised by the Authority under section 8(2) as a recognised market operator;

“record” means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

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

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

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

“representative”, except for the purposes of Part XIII, means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages,

commission or otherwise; and includes any officer of a corporation who performs for the corporation any such activity whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“responsible person”, in relation to a collective investment scheme, means —

- (a) in the case of a scheme which is constituted as a corporation, the corporation; or
- (b) in the case of a scheme which is not constituted as a corporation, the manager for the scheme;

~~“securities” means —~~

- ~~— (a) debentures or stocks issued or proposed to be issued by a government;~~
- ~~— (b) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;~~
- ~~— (c) any right, option or derivative in respect of any such debentures, stocks or shares;~~
- ~~— (d) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —~~
 - ~~— (i) the value or price of any such debentures, stocks or shares;~~
 - ~~— (ii) the value or price of any group of any such debentures, stocks or shares; or~~
 - ~~— (iii) an index of any such debentures, stocks or shares;~~
- ~~— (e) any unit in a collective investment scheme;~~
- ~~— (f) any unit in a business trust;~~
- ~~— (g) any derivative of a unit in a business trust; or~~
- ~~— (h) such other product or class of products as the Authority may prescribe, but does not include —~~
 - ~~— (i) futures contracts which are traded on a futures market;~~
 - ~~— (ii) bills of exchange;~~
 - ~~— (iii) promissory notes;~~
 - ~~— (iv) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere; or~~
 - ~~— (v) such other product or class of products as the Authority may prescribe as not being securities;~~

“securities” means —

(a) shares or any similar instrument representing a legal or beneficial ownership interest in a corporation, partnership, limited liability partnership or unit in a business trust; or

(b) debentures of a government, corporation, body unincorporated, partnership or business trust,

and includes such other instrument or class of instrument as the Authority may prescribe by regulations made under section 341 for the purposes of this paragraph,

but does not include —

(i) any unit in a collective investment scheme;

(ii) bills of exchange;

(iii) promissory notes;

(iv) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere;

(v) such other instrument or class of instruments as the Authority may prescribe as not being securities by regulations made under section 341 for the purposes of this paragraph;

“securities-based derivative contract” means any contract or arrangement where
—

(a) a party to the contract or arrangement must, or may be required to, discharge its obligations under the contract or arrangement at some future time;

(b) the amount of the consideration, or the value of the contract or arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of any securities or securities index,

and includes any contracts or arrangement that is, or that belongs to a class of contracts or arrangement that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

but does not include any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

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

“securities, securities-based derivative contracts and collective investment scheme financing” has the meaning given to it in the Second Schedule;

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

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

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

“spot contract” means a contract or arrangement for the sale or purchase of any underlying thing at the current spot price, where it is intended for a party to the contract or arrangement to take actual delivery of the underlying thing;

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

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

“substantial unitholder” —

(a) in relation to a collective investment scheme, means a participant who has an interest or interests in one or more voting units in the scheme, the total votes attached to that unit, or those units, being not less than 5% of the total votes attached to all the voting units in the scheme; or

(b) in relation to a business trust, means a person who has an interest or interests in one or more voting units in the business trust, the total votes attached to that unit, or those units, being not less than 5% of the total votes attached to all the voting units in the business trust;

~~“swap contract” —~~

~~— (a) means a contract for differences, or a contract the purpose or purported purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —~~

~~— (i) the value or price of one or more underlying things;~~

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

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

~~— (b) does not include any securities;~~

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

“take-over offer” means —

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

(i) in the case of a public company, or of a corporation all or any of the shares of which are listed for quotation on an approved a securities exchange —

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

- (B) all of the remaining shares in the company or corporation made to all other members of the company or corporation as a result of the person acquiring or consolidating effective control of that company or corporation within the meaning of the Take-over Code;
- (ii) in the case of a registered business trust, or of a business trust all or any of the units of which are listed for quotation on an approved securities exchange —
 - (A) some or all of the units, or some or all of the units of a particular class, in the business trust made to all unitholders of the business trust, or where the person already holds units in the business trust, made to all other unitholders of the business trust; or
 - (B) all of the remaining units in the business trust made to all other unitholders of the business trust as a result of the person acquiring or consolidating effective control of that business trust within the meaning of the Take-over Code; or
- (iii) in the case of a collective investment scheme constituted as a unit trust and authorised under section 286, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and all or any of the units in which are listed for quotation on an approved securities exchange —
 - (A) some or all of the units, or some or all of the units of a particular class, in the scheme made to all unitholders of the scheme, or where the person already holds units in the scheme, made to all other unitholders of the scheme; or
 - (B) all of the remaining units in the scheme made to all other unitholders of the scheme as a result of the person acquiring or consolidating effective control of that scheme within the meaning of the Take-over Code; or
- (b) a proposed compromise or arrangement which —
 - (i) in the case of a public company, is referred to in section 210 of the Companies Act (Cap. 50); or
 - (ii) in the case of a corporation all or any of the shares of which are listed for quotation on an approved securities exchange, complies with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country or territory in which that corporation was incorporated,

and which, if executed, would result in a change in effective control of the public company or corporation within the meaning of the Take-over Code;

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

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

“transaction information” means information relating to —

- (a) offers or invitations to enter into, purchase, sell, or exchange ~~securities, futures contracts or derivatives contracts~~capital markets products;
- (b) executed transactions in ~~securities, futures contracts or derivatives contracts~~capital markets products;
- (c) transactions cleared or settled by an approved clearing house or a recognised clearing house; or
- (d) transactions reported to a licensed trade repository or licensed foreign trade repository;

“treasury share” —

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

“trustee-manager” —

- (a) in relation to a registered business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);
- (b) in relation to a business trust for which an application for registration has been made under section 4(1) of the Business Trusts Act, means the company proposed to be named as the trustee-manager in the application made under that section;
- (c) in relation to a recognised business trust, means the entity which manages and operates the recognised business trust, by whatever name called and whether incorporated or not; and
- (d) in relation to a business trust for which an application for recognition has been made under section 282TA(1), means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;

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

~~— (a) means —~~

- ~~—— (i) a commodity;~~
- ~~—— (ii) the credit of any person; or~~
- ~~—— (iii) any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this sub-paragraph; but~~
- ~~—— (b) does not include any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this paragraph;~~

“underlying thing” means —

- (a) any unit in a collective investment scheme;
- (b) a commodity;
- (c) a financial instrument;
- (d) any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this sub-paragraph;

but does not include any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this paragraph;

“unit” —

- (a) in relation to a collective investment scheme, means a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; and
- (b) in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“unitholder” —

- (a) in relation to a collective investment scheme, means a participant of the scheme; and
- (b) in relation to a business trust, means a person who holds a unit in the business trust;

“user” means —

(a) in relation to an approved exchange, a recognised market operator, an approved clearing house or a recognised clearing house, a person who is —

(i) a member of the approved exchange, a recognised market operator, approved clearing house or recognised clearing house; or

(ii) a customer of a member of the approved exchange, a recognised market operator, approved clearing house or recognised clearing house; or

(b) in relation to a licensed trade repository or a licensed foreign trade repository, a person who is —

(i) a participant of the licensed trade repository or licensed foreign trade repository; or

(ii) a client of a participant of the licensed trade repository or licensed foreign trade repository;

“user information” means transaction information that is referable to —

(a) a named user; or

(b) a group of users, from which the name of a user can be directly inferred;

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

“voting unit” —

(a) in relation to a business trust, means an issued unit in the business trust, other than —

(i) a unit to which in no circumstances is there attached a right to vote; or

(ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:

(A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrears;

(B) upon a proposal to reduce the unitholders’ equity of the business trust;

(C) upon a proposal that affects rights attached to the unit;

(D) upon a proposal to wind up the business trust;

(E) upon a proposal for the disposal of the whole of the property, business and undertakings of the business trust;

(F) during the winding up of the business trust; and

(b) in relation to a collective investment scheme, means an issued unit in the scheme, other than —

- (i) a unit to which in no circumstances is there attached a right to vote; or
- (ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:
 - (A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrears;
 - (B) upon a proposal to reduce the participants' funds of the scheme;
 - (C) upon a proposal that affects rights attached to the unit;
 - (D) upon a proposal to wind up the scheme;
 - (E) upon a proposal for the disposal of the whole of the property, business and undertakings of the scheme;
 - (F) during the winding up of the scheme.

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

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

and without limiting the generality of sub-paragraphs (i) to (iv), any conduct of such a receiver or such a receiver and manager, or such a judicial manager, or any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;

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

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

(4) For the purposes of this Act, a person has a substantial shareholding in a corporation if —

- (a) he has an interest or interests in one or more voting shares (excluding treasury shares) in the corporation; and
- (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in the corporation.

(5) For the purposes of this Act, a person has a substantial shareholding in a corporation, being a corporation the share capital of which is divided into 2 or more classes of shares, if —

- (a) he has an interest or interests in one or more voting shares (excluding treasury shares) in one of those classes; and

(b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in that class.

(6) For the purposes of this Act, a person who has a substantial shareholding in a corporation is a substantial shareholder in that corporation.

Associated person

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

(a) where the other person is a corporation —

(i) a director or secretary of the corporation;

(ii) a related corporation; or

(iii) a director or secretary of such a related corporation;

(b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal, or express or implied —

(i) by reason of which either of those persons may exercise, directly or indirectly, control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;

(ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or

(iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them,

except that, in relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person;

(c) a person with whom the other person is acting, or proposes to act, in concert in relation to the matter to which the reference relates;

(d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —

(i) subject to subsection (2), a person who is a director of a corporation of which the other person is a director; or

(ii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;

- (e) a person with whom the other person is, according to any subsidiary legislation made under this Act, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as referred to in paragraph (a), (b), (c), (d), (e) or (f), that last-mentioned person.

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

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

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

Interest in securities, securities-based derivative contracts and units in a collective investment scheme

4.—(1) Subject to this section, a person has an interest in securities, securities-based derivative contracts or units in a collective investment scheme if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those securities ~~or securities-based derivative contracts~~ or units in a collective investment scheme.

(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities, securities-based derivative contracts or units in a collective investment scheme is, or is capable of being made, subject to restraint or restriction.

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

(4) Where a corporation has, or is by the provisions of this section deemed to have, an interest in a security, securities-based derivative contract or unit in a collective investment scheme and —

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

(b) a person has a controlling interest in the corporation,

that person shall be deemed to have an interest in that security, securities-based derivative contract or unit in a collective investment scheme.

(5) Where a corporation has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a security, securities-based derivative contract or unit in a collective investment scheme and —

(a) a person is;

(b) the associates of a person are; or

(c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation, that person shall be deemed to have an interest in that security, securities-based derivative contract or unit in a collective investment scheme.

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

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

(b) a person in accordance with whose directions, instructions or wishes that the second-mentioned person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security, securities-based derivative contract or unit in a collective investment scheme referred to in subsection (5);

(c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security, securities-based derivative contract or unit in a collective investment scheme;

(d) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security, securities-based derivative contract or unit in a collective investment scheme; or

(e) a corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the second-mentioned person is accustomed or under an obligation, whether formal or informal, to act in relation to that security, securities-based derivative contract or unit in a collective investment scheme.

(7) A person shall be deemed to have an interest in a security, securities-based derivative contract or unit in a collective investment scheme in any one or more of the following circumstances:

(a) where he has entered into a contract to purchase a security, securities-based derivative contract or unit in a collective investment scheme;

(b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security, securities-based derivative contract or unit in a collective investment scheme transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(c) where he has the right to acquire a security, securities-based derivative contract or unit in a collective investment scheme or an interest in a security, securities-based derivative contract or unit in a collective investment scheme, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, securities-based derivative contract or unit in a collective investment scheme, not being a security or unit in a collective investment scheme of which he is the registered holder, or a securities-based derivative contract of which he is a party to.

(8) A person shall be deemed to have an interest in a security, securities-based derivative contract or unit in a collective investment scheme if that security, securities-based derivative contract or unit in a collective investment scheme is held jointly with another person.

(9) For the purpose of determining whether a person has an interest in a security, securities-based derivative contract or unit in a collective investment scheme, it is immaterial that the interest cannot be related to a particular security, securities-based derivative contract or unit in a collective investment scheme.

(10) There shall be disregarded —

- (a) an interest in a security, securities-based derivative contract or unit in a collective investment scheme if the interest is that of a person who holds the security or securities-based derivative contract as bare trustee;
- (b) an interest in a security, securities-based derivative contract or unit in a collective investment scheme if the interest is that of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security, securities-based derivative contract or unit in a collective investment scheme if that interest is an interest held by him by reason of his holding a prescribed office;
- (d) an interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act (Cap. 50); and
- (e) a prescribed interest in a security, securities-based derivative contract or unit in a collective investment scheme being an interest of such person, or of the persons included in such class of persons, as may be prescribed;
- (f) for the purposes of Part VII, an interest in a securities-based derivative contract where the obligations under such contract or arrangement to be discharged by one party to the other at some future time is fulfilled wholly in cash.

(11) An interest in a security, securities-based derivative contract or unit in a collective investment scheme shall not be disregarded by reason only of —

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

Specific classes of investors

4A.—(1) Subject to subsection (2), unless the context otherwise requires —

(a) “accredited investor” means —

(i) an individual —

- (A) whose net personal assets exceed in value \$2 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount; or
- (B) whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;

- (ii) a corporation with net assets exceeding \$10 million in value (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe, in place of the first amount, as determined by —
 - (A) the most recent audited balance-sheet of the corporation; or
 - (B) where the corporation is not required to prepare audited accounts regularly, a balance-sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance-sheet, which date shall be within the preceding 12 months;
 - (iii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
 - (iv) such other person as the Authority may prescribe;
- (b) “expert investor” means —
- (i) a person whose business involves the acquisition and disposal, or the holding, of capital markets products, whether as principal or agent;
 - (ii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
 - (iii) such other person as the Authority may prescribe;
- (c) “institutional investor” means —
- (i) a bank that is licensed under the Banking Act (Cap. 19);
 - (ii) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
 - (iii) a finance company that is licensed under the Finance Companies Act (Cap. 108);
 - (iv) a company or co-operative society that is licensed under the Insurance Act (Cap. 142) to carry on insurance business in Singapore;
 - (v) a company licensed under the Trust Companies Act 2005 (Act 11 of 2005);
 - (vi) the Government;
 - (vii) a statutory body established under any Act;
 - (viii) a pension fund or collective investment scheme;
 - (ix) the holder of a capital markets services licence for —
 - (A) dealing in ~~securities~~capital markets products;
 - (B) fund management;
 - (C) providing custodial services in relation to securities, securities-based derivative contracts and units in a collective investment scheme—~~for securities~~;

- (CA) real estate investment trust management; or
- (D) securities, securities-based derivative contracts and collective investment scheme financing; ~~or~~
- ~~(E) trading in futures contracts;~~
- (x) a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors;
- (xi) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
- (xii) such other person as the Authority may prescribe.

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

Application

4B. This Act does not apply to —

~~—(a)— a body corporate approved as a commodity market under section 5 of the Commodity Trading Act (Cap. 48A);~~

~~—(b)— a body corporate approved as a clearing house under section 9 of that Act; or~~

~~—(c)— the holder of a licence issued under that the Commodity Trading Act (Cap. 48A) when acting lawfully under that Act,~~

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

PART II
ORGANISED MARKETS

Objectives of this Part

5. The objectives of this Part are —

- (a) to promote fair, orderly and transparent organised markets;
- (b) to facilitate efficient organised markets for the allocation of capital and the transfer of risks; and
- (c) to reduce systemic risk.

Interpretation of this Part

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

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

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

Division 1 — Establishment of Organised Markets

Requirement for approval or recognition

7.—(1) No person shall establish or operate an organised market, or hold himself out as operating an organised market, unless the person is —

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

(2) No person shall hold himself out —

- (a) as an approved exchange, unless he is an approved exchange; or
- (b) as a recognised market operator, unless he is a recognised market operator.

(3) Except with the written approval of the Authority, no person other than an approved exchange or a recognised market operator shall take or use, or have attached to or exhibited at any place —

- (a) the title or description “securities exchange”, “stock exchange”, “futures exchange” or “derivatives exchange” in any language; or
- (b) any title or description which resembles a title or description referred to in paragraph (a).

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

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

(6) Without prejudice to section 337(1), the Authority may, by regulations made under section 44, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(7) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by notice in writing, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 5.

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

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

- (a) add to the conditions and restrictions referred to in subsection (7); or
- (b) vary or revoke any condition or restriction referred to in that subsection.

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

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

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

Application for approval or recognition

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

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

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

(3) An application under subsection (1) or (2) shall be —

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

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

Power of Authority to approve exchange and recognise market operator

9.—(1) Where a Singapore corporation has made an application under section 8(1), the Authority may —

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

(2) Where a foreign corporation has made an application under section 8(2), the Authority may recognise the foreign corporation as a recognised market operator.

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

- (a) treat an application under section 8(1)(a) as an application under section 8(1)(b) if the Authority is of the opinion that the applicant would be more appropriately regulated as a recognised market operator; or
- (b) treat an application under section 8(1)(b) as an application under section 8(1)(a) if the Authority is of the opinion that the applicant would be more appropriately regulated as an approved exchange.

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

- (a) the activities that the corporation may undertake;
- (b) the products that may be traded on any organised market established or operated by the corporation;
- (c) the nature of the investors or participants who may use, or have an interest in any product traded on any organised market established or operated by the corporation; and
- (d) the financial requirements to be imposed on the corporation.

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

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

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

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

- (a) the corporation has not provided the Authority with such information as the Authority may require, relating to —
 - (i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business; or
 - (ii) any circumstances likely to affect the corporation's manner of conducting business or operations;
- (b) any information or document provided by the corporation to the Authority is false or misleading;
- (c) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;
- (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder, as the case may be, being a compromise or scheme of arrangement that is still in operation;
- (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of [relevant section of the Securities and Futures (Amendment) Act], involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer, as the case may be, had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act committed before, on or after the date of commencement of [relevant section of the Securities and Futures (Amendment) Act];
- (h) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any organised market;

- (i) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;
- (k) the Authority is not satisfied as to —
 - (i) the financial standing of the corporation or any of its substantial shareholders; or
 - (ii) the manner in which the business of the corporation is to be conducted;
- (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on in connection with the establishment or operation of any organised market;
- (m) there are other circumstances which are likely to —
 - (i) lead to the improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or
 - (ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;
- (n) in the case of any organised market that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a fair, orderly and transparent organised market;
- (o) the corporation does not satisfy the criteria prescribed under section 10 to be approved as an approved exchange or recognised as a recognised market operator, as the case may be; or
- (p) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

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

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

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

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

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

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

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

General criteria to be taken into account by Authority

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

- (a) whether a Singapore corporation referred to in section 8(1) or 12(1) should be approved as an approved exchange or recognised as a recognised market operator;
- (b) whether a foreign corporation referred to in section 8(2) should be recognised as a recognised market operator; and
- (c) whether an approved exchange or a recognised market operator that is subject to a review by the Authority under section 12(4) should be approved as an approved exchange or recognised as a recognised market operator.

(2) Without prejudice to section 9 and subsection (1), the Authority may, for the purposes of deciding whether to recognise a foreign corporation as a recognised market operator under section 9(2), have regard, in addition to any requirements prescribed under section 9(7) and any criteria prescribed under subsection (1), to —

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

(b) whether the foreign corporation is, in the country or territory in which the head office or principal place of business of the foreign corporation is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 5 are achieved, to the requirements and supervision to which approved exchanges and recognised market operators are subject under this Act.

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

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

(b) the rules and practices of the foreign corporation.

Annual fees payable by approved exchange and recognised market operator

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

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

Change in status

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

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

(a) made in such form and manner as the Authority may prescribe; and

(b) accompanied by a non-refundable prescribed application fee, which shall be paid in the manner specified by the Authority.

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

(4) The Authority may, from time to time, on its own initiative, review the status of a Singapore corporation that is an approved exchange or a recognised market operator in accordance with the requirements prescribed under section 9(7) and the criteria prescribed under section 10(1).

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

(a) if the corporation is an approved exchange, withdraw the approval as such and recognise the corporation as a recognised market operator under section 9(1)(b);

- (b) if the corporation is a recognised market operator, withdraw the recognition as such and approve the corporation as an approved exchange under section 9(1)(a); or
- (c) make no change to the status of the corporation as an approved exchange or a recognised market operator.

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

(7) Where a review of the status of a Singapore corporation is conducted by the Authority on its own initiative under subsection (4), the Authority shall not exercise its powers under subsection (5)(a) or (b) without giving the corporation an opportunity to be heard.

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

Cancellation of approval or recognition

13.—(1) An approved exchange or a recognised market operator which intends to cease operating its organised market or, where it operates more than one organised market, all of its organised markets, may apply to the Authority to cancel its approval as an approved exchange or recognition as a recognised market operator, as the case may be.

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

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

- (a) the approved exchange or recognised market operator referred to in subsection (1) has ceased operating its organised market or all of its organised markets, as the case may be; and
- (b) the cancellation of the approval or recognition, as the case may be, will not detract from the objectives specified in section 5.

Power of Authority to revoke approval and recognition

14.—(1) The Authority may revoke any approval of a Singapore corporation as an approved exchange under section 9(1)(a), any recognition of a Singapore corporation as a recognised market operator under section 9(1)(b) or any recognition of a foreign corporation as a recognised market operator under section 9(2) if —

- (a) there exists at any time a ground under section 9(7) or (8) on which the Authority may refuse an application;

- (b) the corporation does not commence operating its organised market or, where it operates more than one organised market, all of its organised markets, within 12 months after the date on which it was granted the approval under section 9(1)(a) or was recognised under section 9(1)(b) or (2), as the case may be;
- (c) the corporation ceases to operate its organised market or, where it operates more than one organised market, all of its organised markets;
- (d) the corporation contravenes —
 - (i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;
 - (ii) any direction issued to it by the Authority under this Act; or
 - (iii) any provision in this Act;
- (e) upon the Authority exercising any power under section 45D(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;
- (f) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or
- (g) any information or document provided by the corporation to the Authority is false or misleading.

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any approval under section 9(1)(a) or recognition under section 9(1)(b) or (2) that was granted to a corporation without giving the corporation an opportunity to be heard.

(3) The Authority may revoke an approval under section 9(1)(a), or a recognition under section 9(1)(b) or (2), that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

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

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

- (a) it has ceased to operate the organised market for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or
- (b) it has ceased to operate the organised market under a direction issued by the Authority under section 45.

(5) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision shall be final.

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

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

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 9(1) or (2) shall not operate so as to —

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

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

Division 2 — Regulation of Approved Exchanges

Subdivision (1) — Obligations of approved exchanges

General obligations

15.—(1) An approved exchange —

- (a) shall operate a fair, orderly and transparent organised market;
- (b) shall manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, shall not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) shall ensure that access for participation in its facilities is subject to criteria that are fair and objective, and that are designed to ensure the orderly functioning of its organised market and to protect the interests of the investing public;

- (e) shall maintain business rules and, where appropriate, listing rules that make satisfactory provision for —
 - (i) the organised market to be operated in a fair, orderly and transparent manner; and
 - (ii) the proper regulation and supervision of its members;
- (f) shall enforce compliance with its business rules and, where appropriate, its listing rules;
- (g) shall have sufficient financial, human and system resources —
 - (i) to operate a fair, orderly and transparent organised market;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements;
- (h) shall maintain governance arrangements that are adequate for the organised market to be operated in a fair, orderly and transparent manner; and
- (i) shall ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

(2) The Authority may by notice in writing exempt any organised market operated by an approved exchange from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 5.

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

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

Obligation to notify Authority of certain matters

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

- (a) any material change to the information provided by the approved exchange in its application under section 8(1) or 12(1);
- (b) any changes to the type or number of organised markets it operates;
- (c) the carrying on of any business (referred to in this section as a proscribed business) by the approved exchange, that is not such business or within such class of business as the Authority may prescribe;
- (d) the acquisition by the approved exchange of a substantial shareholding in a corporation (referred to in this section as a proscribed corporation), which carries on any business that is not such business or within such class of business as the Authority may prescribe;
- (e) the approved exchange becoming aware of any financial irregularity or other matter which in its opinion —

- (i) may affect its ability to discharge its financial obligations; or
 - (ii) may affect the ability of a member of the approved exchange to meet its financial obligations to the approved exchange;
 - (f) the approved exchange reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved exchange;
 - (g) any other matter that the Authority may —
 - (i) prescribe by regulations made under section 44 for the purposes of this paragraph; or
 - (ii) specify by notice in writing to the approved exchange in any particular case.
- (2) Without prejudice to the generality of section 45(1), the Authority may, at any time after receiving a notice referred to in subsection (1), issue directions to the approved exchange —
- (a) where the notice relates to a matter referred to in subsection (1)(c) —
 - (i) to cease carrying on the proscribed business; or
 - (ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 45(1); or
 - (b) where the notice relates to a matter referred to in subsection (1)(d) —
 - (i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or
 - (ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 45 (1).
- (3) An approved exchange shall comply with every direction issued to it under subsection (2) notwithstanding anything to the contrary in the Companies Act (Cap. 50) or any other law.
- (4) An approved exchange shall notify the Authority of any matter that the Authority may prescribe by regulations made under section 44 for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.
- (5) An approved exchange shall notify the Authority of any matter that the Authority may specify by notice in writing to the approved exchange, no later than such time as the Authority may specify in that notice.

Obligation to manage risks prudently

17.—(1) Without prejudice to the generality of section 15(1)(b), an approved exchange shall ensure that the systems and controls concerning the assessment and management of risks to every organised market that it operates and the limits which it intends to establish on the number of open positions which are held by any person under any derivative contract traded on an organised market that it operates, are adequate and appropriate for the scale and nature of its operations.

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

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

Obligation to maintain proper records

18.—(1) An approved exchange shall maintain a record of all transactions effected through its organised market.

(2) The Authority may prescribe by regulations made under section 44 —

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

Obligation to submit periodic reports

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

Obligation to assist Authority

20. An approved exchange shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

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

(B) in respect of any transaction or class of transactions, whether completed or uncompleted, effected through its organised market and product or class of products traded on its organised market; and

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

Obligation to maintain confidentiality

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

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

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

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or furnished; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

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

Penalties under this Subdivision

22. Any approved exchange which contravenes section 15(1), 16(1) or (3), 18(1), 19, 20 or 21(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Subdivision (2) — Rules of approved exchanges

Business rules and listing rules of approved exchanges

23.—(1) Without limiting the generality of sections 15 and 44 —

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

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

(3) In this Subdivision, any reference to an amendment to a business rule or listing rule shall be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under, the business rule or listing rule, as the case may be, whether the change is made by an alteration to the text of the rule or by any other notice issued by or on behalf of the approved exchange.

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

Business rules of approved exchanges have effect as contract

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

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

(2) The approved exchange and each member shall be deemed to have agreed to observe and perform the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the approved exchange or that member, as the case may be.

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

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

(2) In this section, “person” against whom an order under subsection (1) may be made includes —

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

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

- (c) an approved exchange.

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

(4) Any person who, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) Subsection (4) shall not affect the powers of the court in relation to the punishment for contempt of court.

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

26. Any failure by an approved exchange to comply with —

- (a) this Act;
- (b) its business rules; or
- (c) where applicable, its listing rules,

in relation to a matter shall not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules or listing rules.

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in approved exchanges

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

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

- (a) a 12% controller of an approved exchange; or
- (b) a 20% controller of an approved exchange.

(3) In subsection (2) —

"12% controller", in relation to an approved exchange, means a person, not being a 20% controller, who alone or together with his associates —

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

"20% controller", in relation to an approved exchange, means a person who, alone or together with his associates —

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

(4) In this section —

(a) a person holds a share if —

- (i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or
- (ii) he otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act;

(b) a reference to the control of a percentage of the votes in an approved exchange shall be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the approved exchange; and

(c) a person, A, is an associate of another person, B, if —

- (i) A is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of B;
- (ii) A is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B or, where B is a corporation, of the directors of B;
- (iii) B is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A or, where A is a corporation, of the directors of A;

- (iv) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
- (v) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;
- (vi) A is a related corporation of B;
- (vii) A is a corporation in which B, whether alone or together with other associates of B as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in A;
- (viii) B is a corporation in which A, whether alone or together with other associates of A as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in B; or
- (ix) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved exchange.

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

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

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act or the memorandum or articles of association or other constituent document or documents of the approved exchange —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the approved exchange shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the approved exchange, the approved exchange shall not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

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

exchange, upon which the approved exchange shall return to the person any payment received from the person in respect of those shares.

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

(10) Without prejudice to sections 45I and 337(1), the Authority may, by regulations made under section 44, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

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

(11) Without prejudice to sections 45I and 337(3) and (4), the Authority may, by notice in writing, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by notice in writing.

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

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

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

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

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

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

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

(4) Without prejudice to the generality of section 44 and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant

its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

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

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

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of [relevant section of the Securities and Futures (Amendment) Act] —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

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

(9) The Authority may make regulations under section 44 relating to the composition and duties of the board of directors or any committee of an approved exchange.

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

(11) Without prejudice to sections 45I and 337(1), the Authority may, by regulations made under section 44, exempt any approved exchange or class of approved exchanges from complying with subsection (1) or (8), subject to such conditions or restriction, as the Authority may prescribe in those regulations.

(12) Without prejudice to sections 45I and 337(3) and (4), the Authority may, by notice in writing, exempt any approved exchange from complying with subsection (1) or (8), subject to such condition or restriction as the Authority may specify by notice in writing.

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

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

Power of Authority to prescribe instruments, contracts and transactions to be notified to or approved by Authority

29.—(1) No approved exchange shall list, de-list or permit the trading of —

- (a) any derivative contract; or
- (b) such other instrument, contract or transaction,

on any organised market operated by the approved exchange, unless the approved exchange has sought the approval of or notified the Authority, as the case may be, at such time or times and in such form or manner as may be prescribed by the Authority.

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

Listing of approved exchanges on organised market

30.—(1) The securities and securities-based derivative contracts of an approved exchange shall not be listed for quotation on an organised market that is operated by the approved exchange or any of its related corporations unless the approved exchange and the operator of the organised market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of the trading of the securities and securities-based derivative contracts of the approved exchange on the organised market.

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

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

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

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

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

Additional powers of Authority in respect of auditors

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

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

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

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

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

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

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

Subdivision (4) — Immunity

Immunity from criminal or civil liability

32.—(1) No criminal or civil liability shall be incurred by an approved exchange or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the approved exchange under this Act or under the business rules or, where appropriate, listing rules of the approved exchange.

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

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

Division 3 — Regulation of Recognised Market Operators

General obligations

33.—(1) A recognised market operator —

- (a) shall operate a fair, orderly and transparent organised market;
- (b) shall manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, shall not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) shall ensure that access for participation in its facilities is subject to criteria that are fair and objective, and that are designed to ensure the orderly functioning of its organised market and to protect the interests of the investing public;
- (e) shall maintain business rules and, where appropriate, listing rules that make satisfactory provision for —
 - (i) the organised market to be operated in a fair, orderly and transparent manner; and
 - (ii) the proper regulation and supervision of its members;
- (f) shall enforce compliance with its business rules and, where appropriate, its listing rules;
- (g) shall have sufficient financial, human and system resources —
 - (i) to operate a fair, orderly and transparent organised market;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements;

- (h) shall maintain governance arrangements that are adequate for the organised market to be operated in a fair, orderly and transparent manner; and
- (i) shall ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

(3) The Authority may by notice in writing exempt any organised market operated by a recognised market operator from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 5.

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

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

Obligation to notify Authority of certain matters

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

- (a) any material change to the information provided by the recognised market operator in its application under section 8(1) or (2) or 12(1);
- (b) the recognised market operator becoming aware of any financial irregularity or other matter which in its opinion —
 - (i) may affect its ability to discharge its financial obligations; or
 - (ii) may affect the ability of a participant of the recognised market operator to meet its financial obligations to the recognised market operator;
- (c) any other matter that the Authority may —
 - (i) prescribe by regulations made under section 44 for the purposes of this paragraph; or
 - (ii) specify by notice in writing to the recognised market operator in any particular case.

(2) A recognised market operator shall notify the Authority of any matter that the Authority may prescribe by regulations made under section 44 for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

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

Obligation to manage risks prudently

35.—(1) Without prejudice to the generality of section 33(1)(b), a recognised market operator shall ensure that the systems and controls concerning the assessment and

management of risks to every organised market that it operates and the limits which it intends to establish on the number of open positions which are held by any person under any derivative contract traded on an organised market that it operates, are adequate and appropriate for the scale and nature of its operations.

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

(3) Any person who wilfully exceeds any position limit established by a recognised market operator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Obligation to maintain proper records

36.—(1) A recognised market operator shall maintain a record of all transactions effected through its organised market.

(2) The Authority may prescribe by regulations made under section 44 —

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

Obligation to submit periodic reports

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

Obligation to assist Authority

38. A recognised market operator shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including—

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
 - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
 - (A) relating to the business of the recognised market operator; or
 - (B) in respect of any transaction or class of transactions, whether completed or uncompleted, effected through its organised market and product or class of products traded on its organised market; and

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

Obligation to maintain confidentiality

39.—(1) Subject to subsection (2), a recognised market operator and its officers and employees shall maintain, and aid in maintaining, confidentiality of all user information that —

- (a) comes to the knowledge of the recognised market operator or any of its officers or employees; or
- (b) is in the possession of the recognised market operator or any of its officers or employees.

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

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or furnished; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

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

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

40. Any failure by a recognised market operator to comply with —

- (a) this Act;
- (b) its business rules; or
- (c) where applicable, its listing rules,

in relation to a matter shall not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules or listing rules.

Power of Authority to prescribe instruments, contracts and transactions to be notified to or approved by Authority

41. No recognised market operator shall list, de-list or permit the trading of —

- (a) any derivative contract; or
- (b) such other instrument, contract or transaction,

on any organised market operated by the recognised market operator, unless the recognised market operator has sought the approval of or notified the Authority, as the case may be, at such time or times and in such form or manner as may be prescribed by the Authority.

Penalties under this Division

42. Any recognised market operator which contravenes section 33(1), 34(1) or (3), 36(1), 37, 38, 39(1) or 41 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Division 4 — General Powers of Authority

Power of Authority to remove officers

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

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

- (d) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) the officer has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) the officer has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of [relevant section of the Securities and Futures (Amendment) Act], involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly.

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved exchange or a recognised market operator has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

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

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

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after the date of commencement of [relevant section of the Securities and Futures (Amendment) Act], —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

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

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

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

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

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

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

Power of Authority to make regulations

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

- (a) relating to the approval of approved exchanges and the recognition of recognised market operators;
- (b) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating an organised market, whether or not the person is approved as an approved exchange under section 9(1)(a) or recognised as a recognised market operator under section 9(1)(b) or (2); and
- (c) for the purposes of sections 17 and 35 and, in particular —
 - (i) requiring an approved exchange or recognised market operator, as the case may be, to take into account specified positions for the purposes of determining if any limits established under section 17(1) or 35(1) have been exceeded;
 - (ii) requiring an approved exchange or recognised market operator, as the case may be, to take specified steps to ensure compliance with those limits; and
 - (iii) specifying measures to manage any risks assumed by an approved exchange or recognised market operator, as the case may be.

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for a penalty not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine

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

Power of Authority to issue directions

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

- (a) for ensuring the fair, orderly and transparent operation of any organised market operated by the approved exchange or recognised market operator, or of organised markets, operated by approved exchanges or recognised market operators, in general;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction as may be imposed by the Authority under section 9(4) or (5), 16(2), 27(5) or (10), 28(11) or (12) or 45I(1) or (2), or such other obligations or requirements under this Act or as may be prescribed by the Authority.

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

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

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

Power of Authority in organised market

45A.—(1) Without prejudice to the generality of section 45, where the Authority is of the opinion that it is necessary to prohibit trading in —

- (a) particular securities of, or made available by, an entity;
- (b) particular units or derivatives of units in a business trust;
- (c) particular securities-based derivative contracts of, or made available by an entity; or
- (d) particular units in a collective investment scheme,

on an organised market of an approved exchange or recognised market operator —

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

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

(2) If, after the receipt of the notice given under subsection (1), the approved exchange or recognised market operator fails to take any action in relation to those securities, units or derivatives of units in a business trust, securities-based derivative contracts or units in a collective investment scheme on that organised market and the Authority continues to be of the opinion that it is necessary to prohibit trading in those securities, units or derivatives of units in a business trust, securities-based derivative contracts or units in a collective investment scheme on that organised market, the Authority may, by notice in writing to the approved exchange or recognised market operator, prohibit trading in those securities, units or derivatives of units in a business trust, securities-based derivative contracts or units in a collective investment scheme on that organised market for such period, not exceeding 14 days, as is specified in the notice.

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

- (a) at the same time send a copy of the notice to —
 - (i) in the case of securities, the entity;
 - (ii) in the case of units or derivatives of units in a business trust, the trustee of the business trust;
 - (iii) in the case of securities-based derivative contracts, the entity; or
 - (iv) in the case of units in a collective investment scheme, the responsible person of the collective investment scheme,together with a statement setting out the reasons for the giving of the notice; and
- (b) as soon as practicable, furnish to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the approved exchange or recognised market operator.

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

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

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

(7) Any approved exchange or recognised market operator which permits trading in securities, units or derivatives of units in a business trust, securities-based derivative contracts or units in a collective investment scheme on the organised market of the approved exchange or recognised market operator in contravention of a notice given under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Emergency powers of Authority

45B.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by notice in writing an approved exchange or recognised market operator to take such action as the Authority considers necessary to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange or recognised market operator.

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

- (a) terminating or suspending trading on the organised market operated by the approved exchange or recognised market operator;
- (b) confining trading to liquidation of positions in capital markets products;
- (c) ordering the liquidation of all positions or any part thereof or the reduction in such positions;
- (d) limiting trading to a specific price range;
- (e) modifying trading days or hours;
- (f) altering conditions of delivery;
- (g) fixing the settlement price at which positions are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in capital markets products or any class of capital markets products;
- (i) requiring margins or additional margins for any capital markets products; and
- (j) modifying or suspending any of the business rules, or listing rules, as the case may be, of the approved exchange or recognised market operator.

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

- (a) set margin levels in any capital markets product or class of capital markets products to cater for the emergency;
- (b) set limits that may apply to positions acquired in good faith prior to the date of the notice issued by the Authority; or
- (c) take such other action as the Authority thinks fit to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange or recognised market operator.

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

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

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

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

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

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

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

Interpretation of sections 45C to 45H

45C. In this section and sections 45D to 45H, unless the context otherwise requires

—
“business” includes affairs and property;

“office holder”, in relation to an approved exchange or a recognised market operator, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved exchange or recognised market operator (as the case may be), or acting in an equivalent capacity in relation to the approved exchange or recognised market operator (as the case may be);

“relevant business” means any business of an approved exchange or a recognised market operator —

- (a) which the Authority has assumed control of under section 45D; or
- (b) in relation to which a statutory adviser or a statutory manager has been appointed under section 45D;

“statutory adviser” means a statutory adviser appointed under section 45D;

“statutory manager” means a statutory manager appointed under section 45D.

Action by Authority if approved exchange or recognised market operator unable to meet obligations, etc.

45D.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) an approved exchange or a recognised market operator informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
 - (b) an approved exchange or a recognised market operator becomes unable to meet its obligations, or is insolvent, or suspends payments;
 - (c) the Authority is of the opinion that an approved exchange or a recognised market operator —
 - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 5;
 - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
 - (iii) has contravened any of the provisions of this Act; or
 - (iv) has failed to comply with any condition or restriction imposed on it under section 9(4) or (5); or
 - (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the approved exchange or recognised market operator (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

- (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved exchange or recognised market operator (as the case may be) on the proper management of such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine; or
- (c) assume control of and manage such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

(3) In the case of an approved exchange, or a recognised market operator, which is incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the approved exchange or recognised market operator (as the case may be) under subsection (2) shall only be in relation to —

- (a) the business or affairs of the approved exchange or recognised market operator (as the case may be) carried on in, or managed in or from, Singapore; or
- (b) the property of the approved exchange or recognised market operator (as the case may be) located in Singapore, or reflected in the books of the approved exchange or recognised market operator (as the case may be) in Singapore, as the case may be, in relation to its operations in Singapore.

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved exchange or a recognised market operator, the Authority shall specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) shall be discharged or exercised by such persons jointly; and
- (c) shall be discharged or exercised by a specified person or such persons.

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 14(1)(e), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

- (a) the exercise or purported exercise of any power under this Act;

- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

(7) Any approved exchange or recognised market operator that fails to comply with a requirement imposed by the Authority under subsection (2)(a) 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.

Effect of assumption of control under section 45D

45E.—(1) Upon assuming control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

- (a) shall manage the relevant business of the approved exchange or recognised market operator (as the case may be) in the name of and on behalf of the approved exchange or recognised market operator (as the case may be); and
- (b) shall be deemed to be an agent of the approved exchange or recognised market operator (as the case may be).

(3) In managing the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

- (a) shall take into consideration the interests of the public or the section of the public referred to in section 45D(1)(c)(i), and the need to protect investors; and
- (b) shall have all the duties, powers and functions of the members of the board of directors of the approved exchange or recognised market operator (as the case may be) (collectively and individually) under this Act, the Companies Act (Cap. 50) and the constitution of the approved exchange or recognised market operator (as the case may be), including powers of delegation, in relation to the relevant business of the approved exchange or recognised market operator (as the case may be); but nothing in this paragraph shall require the Authority or statutory manager to call any meeting of the approved exchange or recognised market operator (as the case may be) under the Companies Act or the constitution of the approved exchange or recognised market operator (as the case may be).

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of an approved exchange or a recognised market operator by

the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be), which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the approved exchange or recognised market operator (as the case may be), for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, except with the approval of the Authority, no person shall be appointed as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be).

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved exchange or a recognised market operator, the Authority may at any time, by notice in writing to the person and the approved exchange or recognised market operator (as the case may be), revoke that approval, and the appointment shall be deemed to be revoked on the date specified in the notice.

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved exchange or a recognised market operator is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved exchange or a recognised market operator in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

(a) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved exchange or recognised market operator (as the case may be),

the direction or decision referred to in sub-paragraph (i) shall, to the extent of the conflict or inconsistency, prevail over the direction or decision referred to in sub-paragraph (ii); and

(b) no person shall exercise any voting or other right attached to any share in the approved exchange or recognised market operator (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act shall be invalid and of no effect.

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to an approved exchange or a recognised market operator, means the memorandum of association and articles of association of the approved exchange or recognised market operator (as the case may be).

Duration of control

45F.—(1) The Authority shall cease to be in control of the relevant business of an approved exchange or a recognised market operator when the Authority is satisfied that —

(a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or

(b) it is no longer necessary in the interests of the public or the section of the public referred to in section 45D(1)(c)(i) or for the protection of investors.

(2) A statutory manager shall be deemed to have assumed control of the relevant business of an approved exchange or a recognised market operator on the date of his appointment as a statutory manager.

(3) The appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator may be revoked by the Authority at any time —

(a) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 45D(1)(c)(i) or for the protection of investors; or

(b) on any other ground,
and upon such revocation, the statutory manager shall cease to be in control of the relevant business of the approved exchange or recognised market operator (as the case may be).

(4) The Authority shall, as soon as practicable, publish in the Gazette the date, and such other particulars as the Authority thinks fit, of —

(a) the Authority's assumption of control of the relevant business of an approved exchange or a recognised market operator;

(b) the cessation of the Authority's control of the relevant business of an approved exchange or a recognised market operator;

(c) the appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator; and

(d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved exchange or a recognised market operator.

Responsibilities of officers, member, etc., of approved exchange or recognised market operator

45G.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

(a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved exchange or recognised market operator (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the approved exchange or recognised market operator (as the case may be) which is comprised in, forms part of or relates to

the relevant business of the approved exchange or recognised market operator (as the case may be), and which is in the person's possession or control; and

- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved exchange or recognised market operator (as the case may be) shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved exchange or recognised market operator (as the case may be), within such time and in such manner as may be specified by the Authority or statutory manager.

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Remuneration and expenses of Authority and others in certain cases

45H.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved exchange or a recognised market operator —

- (a) to a statutory manager or statutory adviser appointed in relation to the approved exchange or recognised market operator (as the case may be), whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the approved exchange or recognised market operator (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

(2) The approved exchange or recognised market operator (as the case may be) shall reimburse the Authority any remuneration and expenses payable by the approved exchange or recognised market operator (as the case may be) to a statutory manager or statutory adviser.

Power of Authority to exempt approved exchange or recognised market operator from provisions of this Part

45I.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 44, exempt any approved exchange, recognised market operator, or class of approved exchanges or recognised market operators from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(2) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any approved exchange or recognised market operator from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by notice in writing, if the Authority is satisfied that the non-compliance by that approved exchange or recognised market operator with that provision will not detract from the objectives specified in section 5.

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

Division 5 — Voluntary Transfer of Business of Approved Exchange or Recognised Market Operator

Interpretation of this Division

45J. In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“Court” means the High Court or a Judge thereof;

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

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved exchange or a recognised market operator, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved exchange or a recognised market operator, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means an approved exchange or a recognised market operator the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

Voluntary transfer of business

45K. — (1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved exchange or a recognised market operator) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved exchange or a recognised market operator; and
- (c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of an approved exchange or a recognised market operator to transfer the whole or any part of its business under any law.

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

(5) The remuneration and expenses of any person appointed under subsection (4) shall be paid by the transferor and the transferee jointly and severally.

(6) The Authority shall serve a copy of any report furnished under subsection (4) on the transferor and the transferee.

(7) The Authority may require a person to furnish, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

(8) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

Approval of transfer

46.—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

(2) Before making an application under subsection (1) —

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 45K(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the Gazette and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the Gazette; and
- (f) unless the Court directs otherwise, the transferor and the transferee shall serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

- (a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
 - (b) may make any application to the Court in relation to the transfer.
- (4) The Court shall not approve the transfer if the Authority has not consented under section 45K(1)(a) to the transfer.
- (5) The Court may, after taking into consideration the views, if any, of the Authority on the transfer —
- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
 - (b) refuse to approve the transfer.
- (6) If the transferee is not approved as an approved exchange or recognised as a recognised market operator by the Authority, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being approved as an approved exchange or recognised as a recognised market operator by the Authority.
- (7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:
- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
 - (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
 - (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
 - (d) the dissolution, without winding up, of the transferor;
 - (e) the provisions to be made for persons who are affected by the transfer;
 - (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.
- (8) Any order under subsection (7) may —
- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
 - (b) make provision in relation to any property which is held by the transferor as trustee; and
 - (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order shall be transferred to and vest in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

(10) No order under subsection (7) shall have any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

(12) Where an order is made under this section, the transferor and the transferee shall each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority;
and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

PART IIA

TRADE REPOSITORIES

Objectives of this Part

46A. The objectives of this Part are —

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

Interpretation of this Part

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

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

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

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

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

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

[...]

Obligation to notify Authority of certain matters

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

- (a) any material change to the information provided by the licensed trade repository in its application under section 46D(1);
- (b) the carrying on of any business (referred to in this section as a proscribed business) by the licensed trade repository, that is not such business or within such class of business as the Authority may prescribe; that is
 - (i) ~~not the business of operating as a trade repository;~~

~~(ii) not incidental to operating as a trade repository; or~~

~~(iii) not such business, or within such class of businesses, as the Authority may prescribe;~~

(c) the acquisition by the licensed trade repository of a substantial shareholding in a corporation (referred to in this section as a proscribed corporation), which carries on any business that is not such business or within such class of business as the Authority may prescribe; ~~which carries on any business that is~~

~~(i) not the business of operating as a trade repository;~~

~~(ii) not incidental to operating as a trade repository; or~~

~~(iii) not such business, or within such class of businesses, as the Authority may prescribe;~~

(d) the licensed trade repository becoming aware of any financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations;

(e) the licensed trade repository reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a participant of the licensed trade repository;

(f) any other matter that the Authority may —

(i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or

(ii) specify by notice in writing to the licensed trade repository in any particular case.

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

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

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

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46ZK(1); or

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

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

(ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority

may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46ZK(1).

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

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

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

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

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

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

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

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

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence, whether committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012 —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

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

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

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

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

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

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

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

[...]

Emergency powers of Authority

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

(2) Where a licensed trade repository fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may take such action as the Authority thinks fit to maintain or restore the safe and efficient operation of the licensed trade repository.

(3) In this section, “emergency” includes —

(a) any threatened or actual market manipulation;

(b) any act of any government affecting any commodity, financial instrument or securities;

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

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

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

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

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

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

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

PART III
CLEARING FACILITIES

Objectives of this Part

47. The objectives of this Part are —
- (a) to promote safe and efficient clearing facilities; and
 - (b) to reduce systemic risk.

Interpretation of this Part

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

[...]

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

“Singapore corporation” a corporation which is incorporated in Singapore;

[...]

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

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

[...]

Power of Authority to revoke approval ~~and~~or recognition

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

- (a) there exists at any time a ground under section 51(7) or (8) on which the Authority may refuse an application;
- (b) the corporation does not commence operating its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities, within 12

months after the date on which it was granted the approval under section 51(1)(a) or recognition under section 51(1)(b) or (2), as the case may be;

- (c) the corporation ceases to operate its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities;
- (d) the corporation contravenes —
 - (i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;
 - (ii) any direction issued to it by the Authority under this Act; or
 - (iii) any provision in this Act;
- (e) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or
- (f) any information or document provided by the corporation to the Authority is false or misleading.

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

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

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

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

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

(5) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision shall be final.

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

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

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 51(1) or (2) shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of a clearing facility operated by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the approval or recognition; or

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

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

Obligation to notify Authority of certain matters

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

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

(b) the carrying on of any business (referred to in this section as a proscribed business) by the approved clearing house, that is not such business or within such class of business as the Authority may prescribe;~~by the approved clearing house that is —~~

~~(i) not the business of operating a clearing facility;~~

~~(ii) not incidental to operating a clearing facility; or~~

~~(iii) not such business, or within such class of businesses, as the Authority may prescribe;~~

(c) the acquisition by the approved clearing house of a substantial shareholding in a corporation (referred to in this section as a proscribed corporation), which carries on a business that is not such business or within such class of business as the Authority may prescribe, unless otherwise prescribed by the Authority;~~which carries on any business that is —~~

~~(i) not the business of operating a clearing facility;~~

~~(ii) not incidental to operating a clearing facility; or~~

~~(iii) not such business, or within such class of businesses, as the Authority may prescribe;~~

- (d) the approved clearing house becoming aware of any financial irregularity or other matter which in its opinion —
 - (i) may affect its ability to discharge its financial obligations; or
 - (ii) may affect the ability of a member of the approved clearing house to meet its financial obligations to the approved clearing house;
- (e) the approved clearing house reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved clearing house;
- (f) any other matter that the Authority may —
 - (i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or
 - (ii) specify by notice in writing to the approved clearing house in any particular case.

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

- (a) where the notice relates to a matter referred to in subsection (1)(b) —
 - (i) to cease carrying on the proscribed business; or
 - (ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1); or
- (b) where the notice relates to a matter referred to in subsection (1)(c) —
 - (i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or
 - (ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1).

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

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

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

Obligation to manage risks prudently, etc.

59. —(1) Without prejudice to the generality of section 57(1)(b), an approved clearing house shall ensure that the systems and controls concerning the assessment and management of risks to its clearing facility and the limits which it intends to establish on the number of open positions which may be held by any person under any derivative contract cleared or settled with the approved clearing house are adequate and appropriate for the scale and nature of its operations. —

~~(a) ensure that the systems and controls concerning the assessment and management of risks to its clearing facility are adequate and appropriate for the scale and nature of its operations;~~

~~(b) obtain the Authority's approval to the limits which the approved clearing house intends to establish on the number of open positions which may be held by any person under any futures contract cleared or settled with the approved clearing house, and vary those limits only in a manner approved by the Authority; and~~

~~(c) obtain the Authority's approval if the approved clearing house does not intend to establish limits on the number of open positions which may be held by any person under any futures contract cleared or settled with the approved clearing house.~~

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

~~(a) establishing, in respect of open positions which may be held by any person under any futures contract cleared or settled with the approved clearing house, different position limits for different futures contracts, or for different months or days in the period the positions may be held; or~~

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

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

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

[...]

Penalties under this Subdivision

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

[...]

Business rules of approved clearing houses have effect as contract

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

(a) between the approved clearing house and each issuer of securities and securities-based derivative contracts;

(b) between the approved clearing house and each participant;

(c) between each issuer of securities and securities-based derivative contracts and each participant; and

(d) between each participant and every other participant.

(2) The approved clearing house, each issuer of securities and securities-based derivative contracts and each participant shall be deemed to have agreed to observe, and perform the obligations under, the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the approved clearing house, issuer or participant, as the case may be.

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

[...]

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

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

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

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

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

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

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

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence, whether committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012 —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

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

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

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

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

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

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

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

Listing of approved clearing houses on ~~securities~~ organised market

72. —(1) The securities ~~and securities-based derivative contracts~~ of an approved clearing house shall not be listed for quotation on an ~~securities-organised~~ market that is operated by any of its related corporations, unless the approved clearing house and the operator of the ~~securities-organised~~ market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of the trading of the securities and securities-based derivative contracts of the approved clearing house.

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

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

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

- (a) modify the listing rules of the securities-organised market for the purpose of their application to the listing of the securities and securities-based derivative contracts of the approved clearing house for quotation or trading; or
- (b) waive the application of any listing rule of the securities-organised market to the approved clearing house.

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

[...]

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

81I. —(1) Where a participant (referred to in this section as the first participant) sells securities, securities-based derivative contracts or units in collective investment schemes at an over-value to, or purchases securities, securities-based derivative contracts or units in collective investment schemes at an under-value from, another participant (referred to in this section as the second participant) in the circumstances referred to in subsection (3), and thereafter a relevant office holder acts for —

- (a) the second participant;
- (b) the principal of the second participant in the sale or purchase; or
- (c) the estate of the second participant or person referred to in paragraph (b),

then, unless a court otherwise orders, the relevant office holder may recover from the first participant, or the principal of the first participant, an amount equal to the specified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

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

(3) The circumstances referred to in subsection (1) are that —

(a) a specified event has occurred in relation to the second participant, or the principal of the second participant, within the period of 6 months immediately following the date on which the sale or purchase was entered into; and

(b) at the time the sale or purchase was entered into, the first participant, or the principal of the first participant, knew, or ought reasonably to have known, that a specified event was likely to occur in relation to the second participant, or the principal of the second participant.

(4) In this section —

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

(a) the making of a bankruptcy order against the second participant or that person, as the case may be;

(b) the making of a statutory declaration in respect of the second participant or that person, as the case may be, under section 291(1) of the Companies Act (Cap. 50);

(c) the summoning of a meeting of creditors in relation to the second participant or that person, as the case may be, under section 296 of the Companies Act;

(d) the making of an application for the winding up of the second participant or that person, as the case may be, before a court; or

(e) the making of a judicial management order by a court under Part VIIIA of the Companies Act in respect of the second participant or that person, as the case may be;

“specified gain”, in relation to a sale or purchase referred to in subsection (1), means the difference, as at the time the sale or purchase was entered into, between —

(a) the market value of the securities, securities-based derivative contracts or units in collective investment schemes which are the subject of the sale or purchase; and

(b) the value of the consideration for the sale or purchase.

[...]

Power of Authority to make regulations

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

- (a) relating to the approval of approved clearing houses and the recognition of recognised clearing houses;
- (b) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating a clearing facility, whether or not the person is approved as an approved clearing house under section 51(1)(a) or recognised as a recognised clearing house under section 51(1)(b) or (2); and
- (c) for the purposes of section 59 and, in particular —
 - (i) requiring an approved clearing house to take into account specified positions for the purposes of determining if any limits established ~~or varied~~ under section 59(1) have been exceeded;
 - (ii) requiring an approved clearing house to take specified steps to ensure compliance with those limits; and
 - (iii) specifying measures to manage any risks assumed by an approved clearing house.

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for a penalty not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[...]

Emergency powers of Authority

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

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

- (a) ordering the liquidation of all positions or any part thereof, or the reduction of such positions;
- (b) altering the conditions of delivery of transactions cleared or settled, or to be cleared or settled, through the clearing facility;

- (c) fixing the settlement price at which transactions are to be liquidated;
- (d) requiring margins or additional margins for transactions cleared or settled, or to be cleared or settled, through the clearing facility; and
- (e) modifying or suspending any of the business rules of the approved clearing house or recognised clearing house.

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

- (a) set margin levels for transactions cleared or settled, or to be cleared or settled, through the clearing facility to cater for the emergency;
- (b) set limits that may apply to positions acquired in good faith prior to the date of the notice issued by the Authority; or
- (c) take such other action as the Authority thinks fit to maintain or restore the safe and efficient operation of the clearing facilities operated by the approved clearing house or recognised clearing house.

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

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

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

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

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

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

(9) Any approved clearing house or recognised clearing house which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be

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

[...]

PART IIIA

APPROVED HOLDING COMPANIES

[...]

Obligation to notify Authority of certain matters

81ZA. —(1) An approved holding company shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) any material change to the information provided by the approved holding company in its application under section 81V(1);
- (b) the carrying on of any activity (referred to in this section as a proscribed activity) by the approved holding company that is not an activity or within such class of activities that the Authority may prescribe, other than—
 - ~~(i) the activities of a holding company of any approved exchange, licensed trade repository, approved clearing house or corporation that is an approved holding company;~~
 - ~~(ii) an activity incidental to being a holding company of any approved exchange, licensed trade repository, approved clearing house or corporation that is an approved holding company; or~~
 - ~~(iii) such activity or class of activities as the Authority may prescribe;~~
- (c) the acquisition by the approved holding company of a substantial shareholding in a corporation, which is carrying on an activity that is not an activity or within such class of activities as the Authority may prescribe, which does not carry on—
 - ~~(i) any activity of a holding company of any approved exchange, licensed trade repository, approved clearing house or corporation that is an approved holding company;~~
 - ~~(ii) any activity incidental to being a holding company of any approved exchange, licensed trade repository, approved clearing house or corporation that is an approved holding company; or~~
 - ~~(iii) such activity or class of activities as the Authority may prescribe;~~
- (d) any other matter that the Authority may prescribe by regulations made under section 81ZK for the purposes of this paragraph or specify by notice in writing to the approved holding company.

(2) Without prejudice to the generality of section 81ZL(1), the Authority may, at any time after receiving a notification referred to in subsection (1), issue directions to the approved holding company —

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

- (i) to cease carrying on the first-mentioned activity referred to in subsection (1)(b); or
 - (ii) to carry on the first-mentioned activity referred to in subsection (1)(b) subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL(1); or
- (b) where the notification relates to a matter referred to in subsection (1)(c) —
- (i) to dispose of the shareholding referred to in subsection (1)(c); or
 - (ii) to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL(1),

and the approved holding company shall comply with such directions.

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

[...]

Listing of approved holding companies on ~~securities-organised~~ market

81ZG. —(1) The securities and securities-based derivative contracts of an approved holding company shall not be listed for quotation on an securities-organised market that is operated by any of its related corporations unless the approved holding company and the operator of the securities-organised market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of trading of the securities and securities-based derivative contracts of the approved holding company.

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

- (a) the admission to, or removal of, the approved holding company from the official list of the securities-organised market; and
- (b) granting, stopping or suspending the securities and securities-based derivative contracts of the approved holding company from being listed for quotation or quoted on the securities-organised market.

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

- (a) modify the listing rules of the securities organised market for the purpose of their application to the listing for quotation or trading of the securities and securities-based derivative contracts of the approved holding company; or
- (b) waive the application of any listing rule of the securities organised market to the approved holding company.

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

[...]

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

81ZI.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 81ZK, exempt any approved holding company or class of approved holding companies from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

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

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

PART IV
HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND
REPRESENTATIVES

Division 1 — Capital Markets Services Licence

[...]

Grant of capital markets services licence

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

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

(3) A capital markets services licence shall only be granted if the applicant meets such minimum financial and other requirements as the Authority may prescribe, either generally or specifically, or as are provided in the business rules of a ~~securities exchange, futures exchange~~ an approved exchange or recognised market operator.

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

- (a) the applicant has not provided the Authority with such information or documents relating to it or any person employed by or associated with it for the purposes of its business, and to any circumstances likely to affect its manner of conducting business, as the Authority may require;
- (aa) any information or document that is furnished by the applicant to the Authority is false or misleading;
- (b) the applicant or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (c) execution against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (d) a receiver, a receiver and manager, judicial manager or an equivalent person has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the applicant or its substantial shareholder;
- (e) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) the applicant or its substantial shareholder, or any officer of the applicant —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (g) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform in connection with the holding of the licence;
- (h) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (i) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers or customers having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;
- (j) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant's business is to be conducted;
- (k) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
- (l) there are other circumstances which are likely to —
 - (i) lead to the improper conduct of business by the applicant, any of its officers, employees or substantial shareholders; or
 - (ii) reflect discredit on the manner of conducting the business of the applicant or its substantial shareholders;
- (m) the Authority has reason to believe that the applicant, or any of its officers or employees, will not perform the functions for which the applicant seeks to be licensed, efficiently, honestly or fairly;
- (n) the Authority is of the opinion that it would be contrary to the interests of the public to grant the licence; or
- (o) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.

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

(6) The Authority may refuse an application for the grant of a capital markets services licence on any of the following grounds without giving the applicant an opportunity to be heard:

- (a) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;
- (d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.

[...]

Variation of capital markets services licence

90.—(1) The Authority may, on the application of the holder of a capital markets services licence, vary its licence by —

- (a) adding a regulated activity to those already specified in the licence; or
- (b) adding one or more types of capital markets product in respect of which it may conduct the regulated activity specified in the licence.

(1A) The Authority may require an applicant to supply the Authority with such information or documents as it considers necessary in relation to the application.

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

(3) The Authority may —

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

(4) The Authority shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

[...]

Notification of change of particulars

93.—(1) Where —

- (a) the holder of a capital markets services licence ceases to carry on business in any of the regulated activities to which the licence relates or in any type of capital markets products in respect of which it may carry on business in the regulated activities to which the licence relates; or
- (b) a change occurs in any matter records of which are required by section 94 to be kept in relation to the holder,

the holder shall, not later than 14 days after the occurrence of the event, furnish particulars of the event to the Authority in the prescribed form and manner.

(2) Where a holder of a capital markets services licence ceases to carry on business in all the regulated activities to which the licence relates, it shall return the licence to the Authority within 14 days of the date of the cessation.

Records of holders of capital markets services licence

94.—(1) The Authority shall keep in such form as it thinks fit records of holders of a capital markets services licence setting out the following information of each holder:

- (a) its name;
- (b) the address of the principal place of business at which it carries on the business in respect of which the licence is held;
- (c) the regulated activity or activities, or where such activities or activity concerns any type of capital markets product, the type of capital markets product to which its licence relates;
- (d) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
- (e) such other information as may be prescribed.

(2) The Authority may publish the information referred to in subsection (1) or any part of it in such manner as it considers appropriate.

[...]

Exemptions from requirement to hold capital markets services licence

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

- (a) any bank licensed under the Banking Act (Cap. 19) in respect of any regulated activity;
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of any regulated activity which it is approved to carry out under that Act;
- (c) any finance company licensed under the Finance Companies Act (Cap. 108) in respect of any regulated activity that is not prohibited by that Act or for which an exemption from section 25(2) of that Act has been granted;
- (d) any company or co-operative society licensed under the Insurance Act (Cap. 142) in respect of fund management for the purpose of carrying out insurance business;
- (e) [*Deleted by Act 1/2005*]

- (f) any ~~securities exchange, futures exchange~~ approved exchange, recognised market operator or approved holding company in respect of any regulated activity that is solely incidental to its operation of a ~~securities market or futures market~~ an organised market or to its performance as an approved holding company, as the case may be;
- (g) any approved clearing house or recognised clearing house in respect of any regulated activity that is solely incidental to its operation of a clearing facility; and
- (h) such other person or class of persons in respect of any regulated activity as may be exempted by the Authority.

(2) [*Deleted by Act 1/2005*]

(3) [*Deleted by Act 1/2005*]

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

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

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

- (a) if it contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (4);
- (aa) if it fails to pay the annual fee referred to in section 99A;
- (b) if it contravenes any direction issued to it under section 101(1); or
- (c) if the Authority considers that it is carrying on business in a manner that is, in the opinion of the Authority, contrary to the public interest.

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

(8) A withdrawal under subsection (6) of an exemption granted to any person shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the person, whether the agreement, transaction or arrangement was entered into before or after, the withdrawal of the exemption; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

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

[...]

Division 2 — Representatives

Acting as representative

99B.—(1) No person shall act as a representative in respect of any type of regulated activity or hold himself out as doing so, unless he is —

- (a) an appointed representative in respect of that type of regulated activity concerning that type of capital markets product;
- (b) a provisional representative in respect of that type of regulated activity concerning that type of capital markets product;
- (c) a temporary representative in respect of that type of regulated activity concerning that type of capital markets product; or
- (d) a representative of an exempt person under section 99(1)(f), (g) or (h), in so far as —
 - (i) the type and scope of the regulated activity concerning that type of capital markets product carried out by the first-mentioned person are within the type and scope of, or are the same as, that carried out by the exempt person (in his capacity as an exempt person); and
 - (ii) the manner in which the first-mentioned person carries out that type of regulated activity concerning that type of capital markets product is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out that type of regulated activity concerning that type of capital markets product.

(2) The Authority may exempt any person or class of persons from subsection (1), subject to such conditions or restrictions as may be imposed by the Authority.

(3) A principal shall not permit any individual to carry on business in any type of regulated activity concerning any type of capital markets product on its behalf unless —

- (a) the individual is an appointed representative, provisional representative or temporary representative in respect of that type of regulated activity concerning that type of capital markets product; or
- (b) the principal is an exempt person under section 99(1)(f), (g) or (h) and —
 - (i) the type and scope of the regulated activity carried out by the individual concerning that type of capital markets product are within the type and scope of, or are the same as, that carried out by the exempt person (in his capacity as an exempt person); and

- (ii) the manner in which the individual carries out that type of regulated activity concerning that type of capital markets product is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out that type of regulated activity concerning that type of capital markets product.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

Records and public register of representatives

99C.—(1) The Authority shall keep in such form as it thinks fit records of the following information of each appointed representative, provisional representative and temporary representative:

- (a) his name;
- (b) the name of his current principal and every past principal (if any);
- (c) the current and past types of regulated activities concerning any type of capital markets product performed by him and the date of commencement and cessation (if any) of his performance of such activities;
- (d) where the business of the principal for which he acts is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on;
- (e) disciplinary proceedings or other action taken by the Authority against him and published under section 322;
- (f) such other information as may be prescribed.

(2) The information referred to in subsection (1) need only be kept for such period of time as the Authority considers appropriate.

(3) The Authority may reproduce the records referred to in subsection (1) or any part of them in a public register of representatives which shall be published in such manner as it considers appropriate.

Appointed representative

99D.—(1) For the purposes of this Act, an appointed representative in respect of a type of regulated activity concerning a type of capital markets product is an individual —

- (a) who satisfies such entry and examination requirements as may be specified by the Authority for that type of regulated activity concerning that type of capital markets product, the fact of which has been notified to the Authority either in the document lodged under section 99H(1), or (if applicable) under section 99E(5) within the time prescribed under that provision;
- (b) whose name is entered in the public register of representatives as an appointed representative;
- (c) whose status as an appointed representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity concerning that type of capital markets product;
- (d) whose entry in the public register of representatives indicates that he is appointed to carry on business in that type of regulated activity concerning that type of capital markets product and does not indicate that he has ceased to be so; and
- (e) whose principal —
 - (i) is licensed to carry on business in that type of regulated activity concerning that type of capital markets product; or
 - (ii) carries on business in that type of regulated activity concerning that type of capital markets product in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d).

(2) For the purpose of subsection (1)(a), the Authority shall, by direction published in such manner as may be prescribed, specify the examination requirements for each type of regulated activity concerning each type of capital markets product.

(3) The Authority may require the principal or individual to furnish it with such information or documents as the Authority considers necessary in relation to the proposed appointment of the individual as an appointed representative, and the principal or individual, as the case may be, shall comply with such a request.

(4) An individual shall cease to be an appointed representative in respect of any type of regulated activity concerning any type of capital markets product on the date —

- (a) he ceases to be the principal's representative or to carry out that type of regulated activity concerning that type of capital markets product for that principal, the fact of which has been notified to the Authority under subsection (8);
- (b) his principal ceases to carry on business in that type of regulated activity concerning that type of capital markets product;
- (c) the licence of his principal is revoked or lapses or a prohibition order under section 101A is made against his principal prohibiting it from carrying out that type of regulated activity concerning that type of capital markets product;
- (d) the individual dies; or

(e) of the occurrence of such other circumstances as the Authority may prescribe.

(5) An individual shall not be treated as an appointed representative during the period in which the licence of his principal is suspended.

(6) Nothing in subsection (4) or (5) prevents the individual from being treated as an appointed representative in respect of that type of regulated activity concerning that type of capital markets product if he becomes a representative of a new principal in respect of that type of regulated activity concerning that type of capital markets product and subsection (1) is complied with.

(7) Subsections (4) and (5) shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement relating to that type of regulated activity concerning that type of capital markets product entered into by that individual, whether the agreement, transaction or arrangement was entered into before, on or after the cessation or date of suspension; or

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

(8) A principal shall, no later than the next business day after the day —

(a) an individual ceases to be his representative; or

(b) an individual who is his representative ceases to carry on business in any type of regulated activity concerning any type of capital markets product which he is appointed to carry on business in,

furnish particulars of such cessation to the Authority, in the prescribed form and manner.

Provisional representative

99E.—(1) For the purposes of this Act, a provisional representative in respect of a type of regulated activity concerning a type of capital markets product is an individual —

(a) who satisfies such entry requirements as may be specified by the Authority for that type of regulated activity concerning that type of capital markets product;

(b) who intends to undergo an examination in order to satisfy the examination requirements specified by the Authority under section 99D(2) for that type of regulated activity concerning that type of capital markets product, the fact of which has been notified to the Authority in the document lodged under section 99H(1);

(c) whose name is entered in the public register of representatives as a provisional representative;

(d) whose status as a provisional representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity concerning that type of capital markets product;

(e) whose entry in the public register of representatives indicates that he is appointed to carry on business in that type of regulated activity concerning that type of capital markets product and does not indicate that he has ceased to be so;

(f) whose principal —

(i) is licensed to carry on business in that type of regulated activity concerning that type of capital markets product; or

(ii) carries on business in that type of regulated activity concerning that type of capital markets product in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d);

(g) who has not previously been appointed as a provisional representative by the Authority; and

(h) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a provisional representative.

(2) An individual shall only be a provisional representative in respect of any type of regulated activity concerning any type of capital markets product for such period of time as the Authority may specify against his name in the public register of representatives.

(3) A provisional representative in respect of any type of regulated activity concerning any type of capital markets product shall immediately cease to be one —

(a) upon the expiry of the period of time specified by the Authority under subsection (2);

(b) if he fails to comply with any condition or restriction imposed on him under section 99N;

(c) upon his principal informing the Authority of the satisfaction of the examination requirements specified for that or any other type of regulated activity concerning that or any other type of capital markets product under subsection (5); or

(d) on the occurrence of such other circumstances as the Authority may prescribe.

(4) Section 99D(3) to (8) (other than subsection (4)(e) thereof) shall apply to a provisional representative —

(a) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and

(b) with such other modifications and adaptations as the differences between provisional representatives and appointed representatives require.

(5) Where a provisional representative in respect of a type of regulated activity concerning a type of capital markets product has satisfied the examination requirements specified for that type of regulated activity concerning that type of

capital markets product, his principal shall inform the Authority of that fact in the prescribed form and manner and within the prescribed time.

Temporary representative

99F.—(1) For the purposes of this Act, a temporary representative in respect of a type of regulated activity concerning a type of capital markets product is an individual —

- (a) who satisfies such entry requirements as may be specified by the Authority for that type of regulated activity;
- (b) whose name is entered in the public register of representatives as a temporary representative;
- (c) whose status as a temporary representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity concerning that type of capital markets product;
- (d) whose entry in the public register of representatives indicates that he is appointed to carry on business in that type of regulated activity concerning that type of capital markets product and does not indicate that he has ceased to be so;
- (e) whose principal —
 - (i) is licensed to carry on business in that type of regulated activity concerning that type of capital markets product; or
 - (ii) carries on business in that type of regulated activity concerning that type of capital markets product in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d); and
- (f) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a temporary representative.

(2) An individual shall only be a temporary representative in respect of any type of regulated activity concerning any type of capital markets product for such period of time as the Authority may specify against his name in the public register of representatives.

(3) A temporary representative in respect of any type of regulated activity concerning any type of capital markets product shall immediately cease to be one —

- (a) upon the expiry of the period of time specified by the Authority under subsection (2);
- (b) if he fails to comply with any condition or restriction imposed on him under section 99N; or
- (c) on the occurrence of such other circumstances as the Authority may prescribe.

(4) Section 99D(3) to (8) (other than subsection (4)(e) thereof) shall apply to a temporary representative —

- (a) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and
- (b) with such other modifications and adaptations as the differences between temporary representatives and appointed representatives require.

Offences

99G.—(1) Any person who contravenes section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) Any person who contravenes section 99D(8), 99E(4) (in relation to the application of section 99D(8) to a provisional representative), 99F(4) (in relation to the application of section 99D(8) to a temporary representative) or 99H(5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Lodgment of documents

99H.—(1) A principal who desires to appoint an individual as an appointed, provisional or temporary representative in respect of any type of regulated activity concerning any type of capital markets product shall lodge the following documents with the Authority in such form and manner as the Authority may prescribe:

- (a) a notice of intent by the principal to appoint the individual as an appointed, provisional or temporary representative in respect of that type of regulated activity concerning that type of capital markets product;
- (b) a certificate by the principal that the individual is a fit and proper person to be an appointed, provisional or temporary representative in respect of that type of regulated activity concerning that type of capital markets product; and
- (c) in the case of a provisional or temporary representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

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

- (a) that individual has satisfied the examination requirements specified for that type of regulated activity concerning that type of capital markets product; and
- (b) the principal has informed the Authority of that fact in the prescribed form and manner under section 99E(5).

(2) Subject to section 99M, the Authority shall, upon receipt of the documents lodged in accordance with subsection (1), enter in the public register of representatives the name of the representative, whether he is an appointed, provisional or temporary representative, the type of regulated activity concerning the type of capital markets product which he may carry on business in, and such other particulars as the Authority considers appropriate.

(3) The Authority may refuse to enter in the public register of representatives the particulars referred to in subsection (2) of the representative if the fee referred to in section 99K(1) or (4) (if applicable) is not paid.

(4) A principal who submits a certificate under subsection (1)(b) shall keep, in such form and manner and for such period as the Authority may prescribe, copies of all information and documents which the principal relied on in giving the certificate.

(5) Where a change occurs in any particulars of the appointed, provisional or temporary representative in any document required to be furnished to the Authority under subsection (1), the principal shall, no later than 14 days after the occurrence of such change, furnish particulars of such change to the Authority, in the prescribed form and manner.

[...]

Additional regulated activity

99L.—(1) The principal of an appointed representative may at any time lodge a notice with the Authority of its intention to appoint the representative as an appointed representative in respect of a type of regulated activity or a type of capital markets product in addition to that indicated against the representative's name in the public register of representatives.

(2) The notification shall be lodged in such form and manner as may be prescribed and shall be accompanied by a certificate by the principal that the representative is a fit and proper person to be a representative in respect of the additional type of regulated activity or the additional type of capital markets product.

(3) Subject to section 99M, the Authority shall, upon receipt of the notification, enter in the public register of representatives the additional type of regulated activity or the additional type of capital markets product as one which the representative may carry on business in as a representative.

(4) The Authority may, before entering in the public register of representatives the matter set out in subsection (3), require the principal or representative to furnish it with such information or documents as the Authority considers necessary.

(5) A notification under subsection (1) shall be accompanied by a non-refundable prescribed fee which shall be paid in the manner specified by the Authority.

Power of Authority to refuse entry or revoke or suspend status of appointed, provisional or temporary representative

99M.—(1) Subject to regulations made under this Act, the Authority may refuse to enter the name and other particulars of an individual in the public register of representatives, refuse to enter an additional type of regulated activity or an additional type of capital markets product for an appointed representative in that register, or revoke the status of an individual as an appointed, provisional or temporary representative if —

- (a) being an appointed, provisional or temporary representative, he fails or ceases to act as a representative in respect of all of the types of regulated activities concerning all of the types of capital markets product that were notified to the Authority as activities which he is appointed to carry on business in as a representative;
- (b) he or his principal has not provided the Authority with such information or documents as the Authority may require;
- (c) he is an undischarged bankrupt, whether in Singapore or elsewhere;
- (d) execution against him in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) he has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) he —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (g) in the case of the proposed appointment of an appointed, provisional or temporary representative in respect of a type of regulated activity concerning a type of capital markets product, or of an application to enter an additional type of regulated activity or an additional type of capital markets product for an appointed representative in the register —
 - (i) the Authority is not satisfied as to his educational or other qualification or experience having regard to the nature of the duties he is to perform in relation to that type of regulated activity concerning that type of capital markets product;
 - (ii) he or his principal fails to satisfy the Authority that he is a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in that type of regulated activity concerning that type of capital markets product;
 - (iii) the Authority is not satisfied as to his record of past performance or expertise having regard to the nature of the duties which he is to

- perform in relation to that type of regulated activity concerning that type of capital markets product;
- (iv) the Authority has reason to believe that he will not carry on business in that type of regulated activity concerning that type of capital markets product efficiently, honestly or fairly;
- (h) in the case of the revocation of the status of an individual as an appointed, provisional or temporary representative —
- (i) he or his principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition for him to be an appointed, provisional or temporary representative, under section 99N or by regulations (as the case may be), that he remains a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in the type of regulated activity concerning the type of capital markets product for which he is appointed;
- (ii) the Authority is not satisfied with —
- (A) his educational or other qualification or experience (being qualification or experience not known to the Authority at the time his name and particulars are entered in the public register of representatives); or
- (B) his record of past performance or expertise,
- having regard to the nature of his duties as an appointed, provisional or temporary representative;
- (iii) the Authority has reason to believe that he will not carry, or has not carried, on business in the type of regulated activity concerning the type of capital markets product for which he is appointed efficiently, honestly or fairly; or
- (iv) the Authority has reason to believe that he has not acted in the best interests of the subscribers or customers of his principal;
- (i) the Authority has reason to believe that he may not be able to act in the best interests of the subscribers or customers of his principal, having regard to his reputation, character, financial integrity and reliability;
- (j) the Authority is not satisfied as to his financial standing;
- (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the individual or any person employed by or associated with him for the purpose of his business;
- (l) the individual is in arrears of the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);
- (m) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives

or allow him to continue carrying on business as an appointed, provisional or temporary representative or to carry on business in that additional type of regulated activity or that additional type of capital markets product, as the case may be;

- (n) the Authority has reason to believe that any information or document that is furnished by him or his principal to the Authority is false or misleading;
- (o) he has contravened any provision of this Act applicable to him, any condition or restriction imposed on him under this Act or any direction issued to him by the Authority under this Act;
- (oa) it appears to the Authority that he has failed to satisfy any of his obligations under or arising from —
 - (i) this Act; or
 - (ii) any written direction issued by the Authority under this Act;
- (p) a prohibition order under section 101A has been made by the Authority, and remains in force, against him;
- (q) the licence of his principal is revoked;
- (r) the individual fails to pay any fee referred to in section 99K;
- (s) in the case of the proposed appointment of a temporary representative in respect of a type of regulated activity concerning a type of capital markets product —
 - (i) he is not licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity concerning a comparable type of capital markets product in a foreign jurisdiction;
 - (ii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act; or
 - (iii) the period of his proposed appointment, together with the period of any past appointment (or part thereof) that falls within a prescribed period before the date of expiry of his proposed appointment, exceeds the permitted period prescribed by the Authority; or
- (t) in the case of the proposed appointment of a provisional representative in respect of a type of regulated activity concerning a type of capital markets product —
 - (i) he is not or was not previously licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity concerning a comparable type of capital markets product in a foreign jurisdiction for such minimum period as may be prescribed for this sub-paragraph;

- (ii) he was previously so licensed, authorised or regulated in a foreign jurisdiction but the period between the date of his ceasing to be so licensed, authorised or regulated and the date of his proposed appointment as a provisional representative exceeds such period as may be prescribed for this sub-paragraph; or
 - (iii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is or was so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act.
- (2) The Authority may, if it considers it desirable to do so —
 - (a) instead of revoking the status of an individual as an appointed, provisional or temporary representative, suspend that status for such period as the Authority may determine; and
 - (b) at any time —
 - (i) extend the period of suspension; or
 - (ii) revoke the suspension.
- (3) An individual whose status as an appointed, provisional or temporary representative has been revoked shall be deemed not to be an appointed, provisional or temporary representative, as the case may be.
- (4) Where the status of an individual as an appointed, provisional or temporary representative has been suspended, he shall be deemed not to be an appointed, provisional or temporary representative (as the case may be) during the period of suspension.
- (5) Where the Authority has revoked the status of an individual as an appointed, provisional or temporary representative, the Authority shall —
 - (a) indicate against his name in the public register of representatives that fact, which indication shall remain in the register for such period as the Authority considers appropriate; or
 - (b) remove his name from the register.
- (6) Where the Authority has suspended the status of an individual as an appointed, provisional or temporary representative, the Authority shall indicate against his name in the public register of representatives that fact and the period of the suspension.
- (7) Where the Authority has extended or revoked a suspension of the status of an individual as an appointed, provisional or temporary representative, it shall indicate against his name in the public register of representatives the new expiry date of the suspension, or indicate that he is no longer suspended, as the case may be.
- (8) The Authority shall not take any action under subsection (1) or (2)(a) on the ground referred to in subsection (1)(n), if —
 - (a) in a case where the information or document was furnished by the individual to the Authority, the individual proves that he had —

- (i) made all inquiries (if any) that were reasonable in the circumstances; and
 - (ii) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or
- (b) in a case where the information or document was furnished by the principal to the Authority and —
- (i) such information or document was furnished to the principal by the individual, the individual proves that he had —
 - (A) made all inquiries (if any) that were reasonable in the circumstances; and
 - (B) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or
 - (ii) such information or document was not furnished to the principal by the individual, the principal proves that he had —
 - (A) made all inquiries (if any) that were reasonable in the circumstances; and
 - (B) after doing so, believed on reasonable grounds that the information or document was not false or misleading.

(9) Subject to subsection (10), the Authority shall not take any action under subsection (1) or (2)(a) or (b)(i) without giving the individual an opportunity to be heard.

(10) The Authority may take action under subsection (1) or (2)(a) or (b)(i) on any of the following grounds without giving the individual an opportunity to be heard:

- (a) he is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) he has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more;
- (c) a prohibition order under section 101A has been made by the Authority, and remains in force, against the individual;
- (d) the ground referred to in subsection (1)(s)(i) or (iii) or (t)(i) or (ii).

(11) Any revocation or suspension by the Authority shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to any regulated activity concerning any capital markets product entered into by such individual, whether the agreement, transaction or arrangement was entered into before, on or after the revocation or suspension, as the case may be; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

Power of Authority to impose conditions or restrictions

99N.—(1) The Authority may, by notice in writing to an appointed, provisional or temporary representative, impose such conditions or restrictions as it thinks fit on him.

(2) Without prejudice to the generality of subsection (1), the Authority may, in entering the appointed, provisional or temporary representative's name in the public register of representatives, impose conditions or restrictions with respect to the type of regulated activity concerning the type of capital markets product which he may or may not carry on business in.

(3) The Authority may, at any time by notice in writing to the appointed, provisional or temporary representative, vary any condition or restriction or impose such further condition or restriction as it may think fit.

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

False statements in relation to notification of appointed, provisional or temporary representative

99O.—(1) Any principal who, in connection with the lodgment of any document under section 99H —

- (a) makes a statement which is false or misleading in a material particular; or
- (b) omits to state any matter or thing without which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) Any individual who, in connection with the lodgment by his principal of any document under section 99H —

- (a) makes a statement to his principal which is false or misleading in a material particular, being a statement subsequently lodged with the Authority; or
- (b) omits to state any matter or thing to his principal as a result of which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(3) Any person who, when required to furnish any document or information to the Authority under section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) —

- (a) makes a statement to the Authority which is false or misleading in a material particular; or

(b) omits to state any matter or thing to the Authority without which the document or information is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(4) A person referred to in subsection (1), (2) or (3) shall not be guilty of an offence if he proves that he —

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement made or the omission to state the matter or thing, as the case may be, was not false or misleading.

Appeals

99P. Any person who is aggrieved by —

(a) the refusal of the Authority under section 99M(1) to enter his name and other particulars in the public register of representatives, or to enter an additional type of regulated activity or an additional type of capital markets product for him in that register; or

(b) the revocation or suspension of his status as an appointed, provisional or temporary representative under section 99M(1) or (2)(a),

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

Division 3 — General

Power of Authority to make regulations

100.—(1) Without prejudice to section 341, the Authority may make regulations relating to the grant of a capital markets services licence, the proposed appointment of an individual as an appointed, provisional or temporary representative, the entering of his name or an additional type of regulated activity or an additional type of capital markets product in the public register of representatives, and the revocation or suspension of his status as an appointed, provisional or temporary representative, and requirements applicable to the holder of a capital markets services licence, an exempt person, a representative or a class of such persons.

(2) Regulations made under this section may provide —

(a) that a contravention of any specified provision thereof shall be an offence; and

(b) for penalties not exceeding a fine of \$100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[...]

PART V
BOOKS, CUSTOMER ASSETS AND AUDIT

[...]

Reports by auditor to Authority in certain cases

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

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

the auditor shall immediately thereafter send —

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

[...]

Power of auditors appointed by Authority

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

- (a) examine, on oath or affirmation, any officer, employee or agent of the holder or any other auditor appointed under this Act in relation to those books;
- (b) require any officer, employee or agent of the holder, or any other auditor appointed under this Act, to produce any of the books held by or on behalf of the holder relating to its business, and to make copies of or take extracts from, or retain possession of, such books for such period as is necessary to enable them to be inspected;
- (c) require any ~~securities exchange, futures~~ approved exchange, licensed trade repository, approved clearing house or recognised clearing house to produce any of the books kept by it, or any information in its possession, relating to the business of the holder;
- (d) employ such persons as he considers necessary to assist him in carrying out the examination and audit; and

(e) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could do as an auditor under this subsection, other than the examination of any person on oath or affirmation.

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

[...]

Exchanges, etc., may impose additional obligations on members

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

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

[...]

PART VI
CONDUCT OF BUSINESS

Division 1 — General

[...]

Power of Authority to make regulations

123.—(1) The Authority may make regulations in respect of the conduct of business in any regulated activity by the holder of a capital markets services licence or a representative of such a holder.

(2) Without affecting the generality of subsection (1), regulations made under this section may —

- (a) specify requirements applicable to the holder of a capital markets services licence in relation to securities, securities-based derivative contracts and collective investment scheme financing;
- (aa) specify, in the context of the granting of an unsecured advance, unsecured loan or unsecured credit facility by the holder of a capital markets services licence —
 - (i) what constitutes any such unsecured advance, unsecured loan or unsecured credit facility; and
 - (ii) the requirements and restrictions relating to any such grant;
- (b) prohibit the making of direct or indirect representations, expressly or by implication, relating to specified matters, or the use of misleading or deceptive advertisements by or on behalf of the holder, and impose conditions or restrictions for the use of advertisements by or on behalf of the holder;
- (ba) require contract notes to be issued by or on behalf of the holder of a capital markets services licence, and specify the information to be provided in the contract notes;
- (c) specify terms and conditions to be included in customer contracts and provide that the terms and conditions are, unless the Authority in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the customer contracts in which they are included, whether or not a different intention appears in the provisions of the customer contracts;
- (d) specify information that the holder of a capital markets services licence is to provide to its customer on entering into a customer contract with the customer, and thereafter from time to time on request by the customer, concerning the business of the holder and the identity and status of any person acting on behalf of the holder with whom the customer may have contact;

- (e) require the holder of a capital markets services licence, and a representative of such a holder, to ascertain, in relation to each customer of the holder, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the holder, and specify the steps to be taken for this purpose;
- (f) require the holder of a capital markets services licence, and a representative of such a holder, when providing information or advice concerning capital markets products to a customer of the holder, to ensure the suitability of the information or advice to be provided to the customer, and specify the steps to be taken for this purpose;
- (g) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder the financial risks in relation to capital markets products that the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;
- (ga) require the holder of a capital markets services licence, and a representative of such a holder to take specified steps to ensure that a customer or prospective customer of the holder is apprised of the financial risks in relation to trades carried out by means of any trading account, before opening such account for the customer or prospective customer or soliciting or entering into an agreement with him to manage or guide such account;
- (h) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder any commission or advantage the holder or the representative, as the case may be, receives or is to receive from a third party in connection with any capital markets products which the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;
- (i) specify the circumstances in which, and the conditions and restrictions under which, the holder of a capital markets services licence, and a representative of such a holder, may enter into or effect a transaction, and provide for matters relating thereto including the right of the other party to the contract in question to rescind it where a regulation made under this paragraph is contravened;
- (ia) require the holder of a capital markets services licence to comply with prescribed requirements concerning the sale of, or the making of recommendations with respect to, securities, securities-based derivative contracts or units in a collective investment scheme which the holder has subscribed for or purchased, or may be required to subscribe for or purchase, under an underwriting or sub-underwriting agreement;
- (j) specify the circumstances in which, and the conditions under which, the holder of a capital markets services licence, and a representative of such a holder, may use information relating to the affairs of the customer of the holder;

- (k) require the holder of a capital markets services licence, and a representative of such a holder, to take steps to avoid cases of conflict between any of their interests and those of a customer of the holder, and specify the steps to be taken in the event of a potential or actual case of conflict;
 - (l) specify the circumstances in which the holder of a capital markets services licence may receive any property or service from another holder of a capital markets services licence in consideration of directing business to that other holder;
 - (m) specify the circumstances in which, and the conditions and restrictions under which, a representative of the holder of a capital markets services licence is permitted to deal or trade for his own account in securities, securities-based derivative contracts, units in a collective investment scheme or futures derivative contracts;
 - (n) provide for any other matter relating to the practices and standards of conduct of the holder of a capital markets services licence and a representative of such a holder in carrying on business in any regulated activity; and
 - (o) provide that, subject to such conditions or restrictions as may be prescribed, all or specified provisions of this Part shall not apply to a specified class of holders of a capital markets services licences or their representatives, or to a specified class of capital markets products.
- (3) Regulations made under this section may provide that any customer contract entered into by the holder of a capital markets services licence with its customer otherwise than in compliance with any specified regulation is, notwithstanding anything in the contract, unenforceable at the option of the customer.
- (4) Regulations made under this section may provide —
- (a) that a contravention of any specified provision thereof shall be an offence; and
 - (b) for penalties not exceeding a fine of \$100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.
- (5) In this section, “customer contract” means any contract or arrangement between the holder of a capital markets services licence and a customer of the holder which contains terms on which the holder is to provide services to, or effect transactions for, the customer.

PART VIA

REPORTING OF DERIVATIVES CONTRACTS

Interpretation of this Part

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

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

“market contract” means —

- (a) a contract subject to the business rules of an approved clearing house, or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or
- (b) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (a) is to take place;

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

“specified person” means —

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

Reporting of specified derivatives contracts

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

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

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

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

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

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

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

have reported that information to a licensed trade repository or licensed foreign trade repository, if —

- ~~(a) the specified person has reported that information to any other person;~~
- ~~(b) that other any other person has on behalf of the specified person, reported that information, in such form or manner as the Authority may prescribe by regulations made under section 129, to that licensed trade repository or licensed foreign trade repository; and~~

(ba) the specified person has consented to the reporting of that information by such other person; and

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

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

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

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

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

(6A) Any specified person who —

- (a) discloses any information in compliance with subsection (1) or (2);
- (b) reports any information on a specified derivative contract (including any amendment, modification, variation or change to that information) to any person in connection with subsection (4); or
- (c) discloses any information in compliance with the foreign reporting obligations of such jurisdiction as the Authority may prescribe under section 129G,

shall not, upon such disclosure or reporting, be treated as being in breach of any restriction imposed by any prescribed written law or any requirement imposed thereunder or any rule of law upon the disclosure or reporting of such information.

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

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

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

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

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

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

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

Power of Authority to obtain information

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

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

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

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

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

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

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

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

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

Directions on alternative reporting arrangements

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

(a) to maintain records of that information in such form or manner as the Authority may prescribe by regulations made under section 129;

(b) to report that information, or submit records of that information, in such form or manner as the Authority may specify in that notice, at such frequency and over such period as the Authority may specify in that notice, to such person as the Authority may specify in that notice;

(c) to give the Authority, or such person as the Authority may specify in that notice, access to that information, or to records of that information, in such manner as the Authority may specify in that notice.

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

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

issued to him under subsection (1) remains in force, he complies with that direction in relation to that information.

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

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to him under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

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

Compliance with laws and practices of relevant reporting jurisdiction

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

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

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

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

derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

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

(4) In this section —

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

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

Power of Authority to make regulations

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

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

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

Exemption from section 125

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

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

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

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

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

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

PART VIB

CLEARING OF DERIVATIVES CONTRACTS

Interpretation of this Part

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

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

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

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

“specified person” means —

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

Clearing of specified derivatives contracts

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

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

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

Power of Authority to obtain information

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

- (a) whether any derivatives contract or class of derivatives contracts should be prescribed for the purposes of the definition of “specified derivatives contract” in section 129B;
- (b) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (g) of the definition of “specified person” in section 129B; or
- (c) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 129C(1).

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

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

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

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

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

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (3); but
- (b) shall be admissible in evidence for civil proceedings under Part XII.

Directions on alternative clearing arrangements

129E.—(1) Where the Authority is of the opinion that any clearing facility operated by any approved clearing house or recognised clearing house is not available for the

clearing of, or is incapable of clearing, any ~~type of~~ specified derivatives contract under section 129C(1), the Authority may issue directions, whether of a general or specific nature, by notice in writing, to any specified person who is a party to any specified derivatives contract of that type, or to any class of ~~specified~~ such persons who are parties to specified derivatives contracts of that type, requiring the specified person or class of ~~specified~~ such persons, as the case may be, to cause ~~that~~ such specified derivatives contract ~~or those specified derivatives contracts, as the case may be,~~ to undergo clearing by such other person, in such manner, as the Authority may specify in that notice.

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

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

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

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

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

Compliance with laws and practices of relevant clearing jurisdiction

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

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

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

(3) In this section —

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

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

Power of Authority to make regulations

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

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

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

Exemption from section 129C

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

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

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

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

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

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

PART VIC

TRADING OF DERIVATIVE CONTRACTS

Interpretation of this Part

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

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

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

“specified person” means —

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

Trading of specified derivative contracts

129J.—(1) Every specified person shall, as the Authority may prescribe by regulations made under section 129N, execute all specified derivative contracts on an organised market operated by an approved exchange or recognised market operator, or on or through any other facility prescribed by the Authority.

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

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

Power of Authority to obtain information

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

- (a) whether any derivative contract or class of derivative contracts should be prescribed for the purposes of the definition of “specified derivative contract” in section 129I;
- (b) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (g) of the definition of “specified person” in section 129I; or
- (c) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 129J(1),

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

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

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

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

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

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (3); but
- (b) shall be admissible in evidence for civil proceedings under Part XII.

Directions on alternative trading arrangements

129L.—(1) Where the Authority is of the opinion that any organised market operated by any approved exchange or recognised market operator or any other facility as prescribed pursuant to section 129J(1) is not available for the execution of, or is incapable of executing, any specified derivative contract under section 129J(1), the Authority may issue directions, whether of a general or specific nature, by notice in writing, to any specified person, or to any class of such persons, requiring the specified person or class of such persons to execute such specified derivative contract in such manner and within such time, as the Authority may specify in that notice.

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

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

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

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

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

Compliance with laws and practices of relevant trading jurisdiction

129M.—(1) Subject to subsection (2), a specified person shall be deemed to have complied with section 129J(1) in relation to the specified derivative contract, if —

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

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

(3) In this section —

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

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

Power of Authority to make regulations

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

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

- (a) the level of systemic risk posed by that derivative contract or class of derivative contract;
- (b) the characteristics and level of standardisation of the contractual terms and operational processes relating to that derivative contract or class of derivative contracts;
- (c) the depth and liquidity of the market for that derivative contract or class of derivative contracts;
- (d) the international regulatory approach towards that derivative contract or class of derivative contracts;
- (e) the nature of persons that transact in that derivative contract or class of derivative contracts, and the purposes of transacting in that derivative contract or class of derivative contracts;
- (f) whether there is any anti-competitive effect associated with that derivative contract or class of derivative contracts;
- (g) the availability of approved exchanges or recognised market operators that operate organised markets, and the availability of facilities prescribed pursuant to section 129J(1), for the trading of that derivative contract or class of derivative contracts; and
- (h) any other matters that the Authority deems to be relevant.

(3) The Authority may also make regulations relating to the manner in which a specified derivative contract is to be executed on an organised market operated by an approved exchange or a recognised market operator or on or through a facility prescribed pursuant to section 129J(1).

Exemption from section 129J

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

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

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

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

(5) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

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

PART VII

DISCLOSURE OF INTERESTS

Division 1 — Disclosure of Interest in Corporation

Application and interpretation of this Division

130.—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) A reference to a corporation is a reference —

(a) to a company any or all of the shares in which are listed for quotation on the official list of ~~a securities~~ an approved exchange; or

(b) to a corporation (not being a company, or a collective investment scheme constituted as a corporation) any or all of the shares in which are listed for quotation on the official list of ~~a securities~~ an approved exchange, such listing being a primary listing.

(3) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the corporation having attached to it the same rights as are attached to that stock.

(4) A reference to a member —

(a) in relation to a company, means a person who is a member of the company under section 19(6) of the Companies Act (Cap. 50); and

(b) in relation to a corporation (other than a company), means any person equivalent to a member of a company.

(5) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities or securities-based derivative contracts under this Division; and in determining whether a person is deemed to have an interest in securities or securities-based derivative contracts under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

(a) a subsidiary of the second-mentioned person;

(b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities or securities-based derivative contracts; or

(c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities, or securities-based derivative contracts.

(6) For the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time —

- (a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time;
- (b) where the person is a body corporate or unincorporated association (other than a partnership), of which its officer would, if he had acted with reasonable diligence in the conduct of its affairs, have been aware at that time;
- (c) where the person is a limited liability partnership, of which its partner or manager would, if he had acted with reasonable diligence in the conduct of its affairs, have been aware at that time; or
- (d) where the person is a partnership, of which its partner would, if he had acted with reasonable diligence in the conduct of its affairs, have been aware at that time.

(7) In this section —

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association, or a person holding a position analogous to that of president, secretary or member of the committee, and includes a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

[...]

Authority may extend scope of Division in certain circumstances

132. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

- (a) to any person, class of persons, securities or securities-based derivative contracts, interests in securities, or securities-based derivative contracts, ~~or~~ class of securities, or securities-based derivative contracts or class of interests in securities, or securities-based derivative contracts, other than the persons, securities, or securities-based derivative contracts or interests in securities, or securities-based derivative contracts to which this Division applies;
- (b) to require the disclosure of interests in any entity, arrangement or trust other than a corporation,

and the provisions of this Division shall apply accordingly.

Subdivision (1) — Disclosure by directors and chief executive officer of corporation

Duty of director or chief executive officer to notify corporation of his interests

133.—(1) Every director and chief executive officer of a corporation shall give notice in writing to the corporation of particulars of —

(a) shares in —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he holds, or in which he has an interest and the nature and extent of that interest;

(b) debentures of —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he holds, or in which he has an interest and the nature and extent of that interest;

(c) his rights or options, or rights or options of his and another person or other persons, in respect of the acquisition or disposal of shares in or debentures of —

(i) the corporation; or

(ii) a related corporation of the corporation;

(d) contracts to which he is a party, or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in —

(i) the corporation; or

(ii) a related corporation of the corporation;

(e) participatory interests made available by —

(i) the corporation; or

(ii) a related corporation of the corporation,

which he holds, or in which he has an interest and the nature and extent of that interest;

(f) such other securities, or securities-based derivative contracts as the Authority may prescribe, which are held, whether directly or indirectly, by him, or in which he has an interest and the nature and extent of that interest; and

(g) any change in respect of the particulars of any matter referred to in paragraphs (a) to (f).

(2) Paragraphs (a)(ii), (b)(ii), (c)(ii), (d)(ii), (e) and (g) (in respect of a change in the particulars of any matter referred to in paragraphs (a)(ii), (b)(ii), (c)(ii), (d)(ii) and (e)) of subsection (1) shall only apply to a director of a corporation which is a company.

(3) A notice under subsection (1) —

(a) shall be in such form and shall contain such information as the Authority may prescribe; and

(b) shall be given —

(i) in the case of a notice under subsection (1)(g), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the shares, debentures, rights, options, contracts, participatory interests, ~~or~~ other securities or securities-based derivative contracts referred to in subsection (1),

whichever last occurs.

(4) For the purposes of this section —

(a) a director or chief executive officer of a corporation shall be deemed to have an interest in securities or securities-based derivative contracts referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the corporation), as the case may be, holds or has an interest in those securities or securities-based derivative contracts; and

(b) any contract entered into by, any assignment or right of subscription made or exercised by, or any grant made to, a family member of a director or chief executive officer of a corporation (not being himself a director or chief executive officer of the corporation) shall be deemed to have been entered into by, made or exercised by or made to the director or chief executive officer.

(5) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme; and

(b) a reference to a person who holds or acquires participatory interests, ~~or~~ other securities or securities-based derivative contracts referred to in subsection (1), or an interest in shares, debentures, participatory interests, ~~or~~ other securities or securities-based derivative contracts referred to in that subsection, includes a reference to a person who under an option holds or acquires a right to acquire or dispose of the participatory interests, ~~or~~ securities or securities-

based derivative contracts, or the interest in shares, debentures, participatory interests, ~~or securities~~ or securities-based derivative contracts.

(6) In this section, “family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter below the age of 21 years.

[...]

Subdivision (3) — Disclosure by corporation

Duty of corporation to make disclosure

137G.—(1) Where a corporation has been notified in writing by —

- (a) a director or chief executive officer of the corporation pursuant to a requirement imposed on him under section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) or (f), or under section 133(1)(g) in respect of a change in the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f); or
- (b) a substantial shareholder in the corporation pursuant to a requirement imposed on him under section 135, 136 or 137,

the corporation shall announce or otherwise disseminate the information stated in the notice to the ~~securities-organised~~ market operated by the ~~securities-approved~~ exchange on whose official list any or all of the shares of the corporation are listed, as soon as practicable and in any case, no later than the end of the business day following the day on which the corporation received the notice.

(2) The corporation shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

(3) Any corporation that —

- (a) intentionally or recklessly contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information knowing that it is false or misleading in a material particular or reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(4) Any corporation that —

- (a) contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(5) Where an offence has been committed by a corporation under subsection (3) or (4), any officer of the corporation who —

- (a) causes the corporation to contravene subsection (1);
- (b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or
- (c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

- (i) if he had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

(6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the corporation, and includes a person purporting to act in any such capacity.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

*Division 2 — Disclosure of Interest in Business Trust and
Interest in Trustee-Manager of Business Trust*

Application and interpretation of this Division

137H.—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) A reference to a registered business trust is a reference to a registered business trust any or all of the units in which are listed for quotation on the official list of a securities an approved exchange.

(3) A reference to a recognised business trust is a reference to a recognised business trust any or all of the units in which are listed for quotation on the official list of a securities an approved exchange, such listing being a primary listing.

(4) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities or securities-based derivative contracts

under this Division; and in determining whether a person is deemed to have an interest in securities or securities-based derivative contracts under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

- (a) a subsidiary of the second-mentioned person;
- (b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities or securities-based derivative contracts; or
- (c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities or securities-based derivative contracts.

(5) Section 130(6) and (7) shall apply for the purposes of —

- (a) sections 135(2)(b), 136(1) and 137(1) as applied by section 137J(1); and
- (b) sections 137L(6), 137N(2)(b)(i), 137P(1) and 137R(1),

as they apply for the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6).

[...]

Authority may extend scope of Division in certain circumstances

137IA. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

- (a) to any person, class of persons, securities or securities-based derivative contracts, interests in securities or securities-based derivative contracts, class of securities or securities-based derivative contracts or class of interests in securities or securities-based derivative contracts, other than the persons, securities or securities-based derivative contracts or interests in securities or securities-based derivative contracts to which this Division applies;
- (b) to require the disclosure of interests in any entity, arrangement or trust other than a corporation,

and the provisions of this Division shall apply accordingly.

[...]

Subdivision (2) — Disclosure by directors and chief executive officer of trustee-manager of business trust

Duty of director and chief executive officer of trustee-manager to notify his interests

137N.—(1) Every director and chief executive officer of the trustee-manager of a registered business trust or recognised business trust shall give notice in writing to the trustee-manager of particulars of —

- (a) units or derivatives of units in the business trust, being units or derivatives of units held by him, or in which he has an interest and the nature and extent of that interest;
- (b) debentures or units of debentures of the business trust which are held by him, or in which he has an interest and the nature and extent of that interest;
- (c) such other securities or securities-based derivative contracts as the Authority may prescribe which are held, whether directly or indirectly, by him, or in which he has an interest and the nature and extent of that interest; and
- (d) any change in respect of the particulars of any matter referred to in paragraphs (a), (b) and (c).

(2) A notice under subsection (1) —

- (a) shall be in such form and shall contain such information as the Authority may prescribe; and
- (b) shall be given —
 - (i) in the case of a notice under subsection (1)(d), within 2 business days after the director or chief executive officer becomes aware of the change; or
 - (ii) in any other case, within 2 business days after —
 - (A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or
 - (B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, derivatives of units, debentures, units of debentures or other securities or securities-based derivative contracts referred to in subsection (1),whichever last occurs.

(3) For the purposes of this section, a director or chief executive officer of a trustee-manager shall be deemed to have an interest in securities or securities-based derivative contracts referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the trustee-manager), as the case may be, has an interest in those securities or securities-based derivative contracts.

(4) In this section —

“family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter below the age of 21 years;

“unit”, in relation to a debenture, means any right or interest, whether legal or equitable, in the debenture, by whatever name called, and includes any option to acquire any such right or interest in the debenture.

[...]

Subdivision (4) — Disclosure by trustee-manager

Duty of trustee-manager of business trust to make disclosure

137R.—(1) Where the trustee-manager of a registered business trust or recognised business trust —

(a) acquires or disposes of interests in —

(i) units or derivatives of units in the business trust; or

(ii) debentures or units of debentures of the business trust; or

(iii) such other securities or other securities-based derivative contracts of the business trust as the Authority may prescribe; or

(b) has been notified in writing by —

(i) a substantial unitholder of the business trust pursuant to a requirement imposed on him under section 135, 136 or 137 as applied by section 137J(1);

(ii) a director or chief executive officer of the trustee-manager pursuant to a requirement imposed on him under section 137N; or

(iii) a person who holds an interest or interests in voting shares in the trustee-manager pursuant to a requirement imposed on him under section 137P,

the trustee-manager shall announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in the notice it received, as the case may be, to the ~~securities-organised~~ market operated by the ~~securities-approved~~ exchange on whose official list any or all of the units in the business trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which the trustee-manager became aware of the acquisition or disposal, or received the notice.

(2) The trustee-manager shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

(3) Any trustee-manager of a registered business trust or recognised business trust that —

(a) intentionally or recklessly contravenes subsection (1) or (2); or

- (b) in purported compliance with this section, announces or disseminates any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(4) Any trustee-manager of a registered business trust or recognised business trust that —

- (a) contravenes subsection (1) or (2); or

- (b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(5) Where an offence has been committed by a trustee-manager under subsection (3) or (4), any officer of the trustee-manager who —

- (a) causes the trustee-manager to contravene subsection (1);

- (b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or

- (c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

- (i) if he had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both; or

- (ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

(6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the trustee-manager, and includes a person purporting to act in any such capacity.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

*Division 3 — Disclosure of Interests in Real Estate Investment
Trust and Interests in Shares of Responsible Person*

Application and interpretation of this Division

137S.—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) In this Division —

“real estate investment trust” means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and any or all the units in which are listed, by way of a primary listing, for quotation on the official list of ~~a securities~~ an approved exchange;

“trustee” means —

- (a) in relation to a real estate investment trust authorised under section 286, the trustee approved under section 289 for the trust; and
- (b) in relation to any other real estate investment trust, an entity equivalent to a trustee referred to in paragraph (a).

(3) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities, securities-based derivative contracts or units in a collective investments scheme under this Division; and in determining whether a person is deemed to have an interest in securities, securities-based derivative contracts or units in a collective investments scheme under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

- (a) a subsidiary of the second-mentioned person;
- (b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities, securities-based derivative contracts or units in a collective investments scheme; or
- (c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities, securities-based derivative contracts or units in a collective investments scheme.

(4) Section 130(6) and (7) shall apply for the purposes of —

- (a) sections 135(2)(b), 136(1) and 137(1) as applied by section 137U(1); and
- (b) sections 137W(6), 137Y(2)(b)(i), 137ZA(1) and 137ZC(1),

as they apply for the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6).

[...]

Authority may extend scope of Division in certain circumstances

137TA. The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

(a) to any person, class of persons, securities, securities-based derivative contracts or units in a collective investments scheme, interests in securities, securities-based derivative contracts or units in a collective investments scheme, class of securities, securities-based derivative contracts or units in a collective investments scheme or class of interests in securities, securities-based derivative contracts or units in a collective investments scheme, other than the persons, securities, securities-based derivative contracts or units in a collective investments scheme or interests in securities, securities-based derivative contracts or units in a collective investments scheme to which this Division applies;

(b) to require the disclosure of interests in any entity, arrangement or trust other than a corporation,

and the provisions of this Division shall apply accordingly.

[...]

Subdivision (2) — Disclosure by directors and chief executive officer of responsible person

Duty of director and chief executive officer of responsible person to notify his interests

137Y.—(1) Every director and chief executive officer of the responsible person for a real estate investment trust shall give notice in writing to the responsible person of particulars of —

(a) units in the trust, being units held by him, or in which he has an interest and the nature and extent of that interest;

(b) debentures or units of debentures of the trust which are held by him, or in which he has an interest and the nature and extent of that interest;

(c) such other securities, securities-based derivative contracts or units in a collective investments scheme, as the Authority may prescribe, which are held, whether directly or indirectly, by him, or in which he has an interest and the nature and extent of that interest; and

(d) any change in respect of the particulars of any matter referred to in paragraphs (a), (b) and (c).

(2) A notice under subsection (1) —

(a) shall be in such form and shall contain such information as the Authority may prescribe; and

(b) shall be given —

(i) in the case of a notice under subsection (1)(d), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, debentures, units of debentures, other securities, securities-based derivative contracts or units in a collective investments scheme referred to in subsection (1),

whichever last occurs.

(3) For the purposes of this section, a director or chief executive officer of a responsible person shall be deemed to have an interest in securities, securities-based derivative contracts or units in a collective investments scheme referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the responsible person), as the case may be, has an interest in those securities, securities-based derivative contracts or units in a collective investments scheme.

(4) In this section —

“family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter below the age of 21 years;

“unit”, in relation to a debenture, means any right or interest, whether legal or equitable, in the debenture, by whatever name called, and includes any option to acquire any such right or interest in the debenture.

[...]

Subdivision (4) — Disclosure by responsible person

Duty of responsible person for real estate investment trust to make disclosure

137ZC.—(1) Where the responsible person for a real estate investment trust —

(a) acquires or disposes of interests in —

(i) units in the trust; ~~or~~

(ii) debentures or units of debentures of; ~~the real estate investment trust; or~~

(iii) such other securities or other securities-based derivative contracts of the trust as the Authority may prescribe; or

(b) has been notified in writing by —

- (i) a substantial unitholder of the real estate investment trust pursuant to a requirement imposed on him under section 135, 136 or 137 as applied by section 137U(1);
- (ii) a director or chief executive officer of the responsible person pursuant to a requirement imposed on him under section 137Y; or
- (iii) a person who holds an interest or interests in voting shares in the responsible person pursuant to a requirement imposed on him under section 137ZA,

the responsible person shall announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in the notice it received, as the case may be, to the ~~securities-organised~~ market operated by the ~~securities-approved~~ exchange on whose official list any or all of the units in the trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which the responsible person became aware of the acquisition or disposal, or received the notice.

(2) The responsible person shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

(3) Any responsible person for a real estate investment trust that —

- (a) intentionally or recklessly contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(4) Any responsible person for a real estate investment trust that —

- (a) contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(5) Where an offence has been committed by a responsible person under subsection (3) or (4), any officer of the responsible person who —

- (a) causes the responsible person to contravene subsection (1);

- (b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or
- (c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

- (i) if he had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

(6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the responsible person, and includes a person purporting to act in any such capacity.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[...]

PART VIIA
SHORT SELLING

Interpretation of this Part

137ZH.—(1) In this Part, unless the context otherwise requires –

“entity” includes a corporation, an unincorporated association, a partnership, a trust and the government of any state;

“securities lending arrangement” in relation to a specified capital markets product, means an arrangement in writing where a person who has an interest in the specified capital markets product is to transfer part or all of the specified capital markets product to another person (referred to in this Part as the borrower) for an agreed period of time, after which the borrower is to transfer those specified capital markets product back to the first-mentioned person;

“short position” in relation to a specified capital markets product, means a position where the quantity, volume or value of the specified capital markets product which a person has an interest in is less than the quantity, volume or value of the specified capital markets product which the person has an obligation to deliver under an agreement or arrangement, and such quantity, volume or value of the specified capital markets product is determined in accordance with the criteria, methods or formulas, prescribed by the Authority by regulations made under section 137ZM for the purposes of this definition;

“specified capital markets product” means any capital markets product listed or to be listed on an approved exchange that is, or that belongs to a class of capital markets products that is, prescribed by the Authority by regulations made under section 137ZM for the purposes of this definition.

(2) In this Part and subject to subsection (3), a person has an interest in a specified capital markets product if –

(a) the person is the legal or beneficial owner of the specified capital markets product;

(b) the person –

(i) has purchased or entered into an unconditional agreement or arrangement to purchase the specified capital markets product, but has not yet received delivery of such specified capital markets product;

(ii) has tendered the specified capital markets product for conversion or exchange or has issued irrevocable instructions to convert or exchange a

capital markets product into the specified capital markets product, but has not yet received delivery of such specified capital markets product;

(iii) has a right or an obligation to subscribe for the specified capital markets product under an option and such option has been exercised, but has not yet received delivery of such specified capital markets product; or

(iv) has a right or warrant to subscribe for the specified capital markets product and such right has been exercised, but has not yet received delivery of such specified capital markets product; and

the person receives or it is intended that the person will receive delivery of the specified capital markets product pursuant to the agreement, arrangement, option or right, referred to in subsection (2)(b)(i) to (iv) before the settlement of the sale of the specified capital markets product has been effected;

(c) the person's legal or beneficial ownership in the specified capital markets product has been vested in another person pursuant to a securities lending arrangement, but the person has a right to recall under the securities lending arrangement;

(d) the person holds the specified capital markets product on behalf of another person, except where the second-mentioned person has the sole discretion to decide whether the specified capital markets product will be sold; or

(e) another person holds the specified capital markets product on the person's behalf but only where the person has the sole discretion to decide whether the specified capital markets product will be sold.

(3) In this Part, a person shall not be regarded as having an interest in a specified capital markets product if –

(a) that person is a borrower and has obtained the interest in the specified capital markets product pursuant to a securities lending arrangement; or

(b) that person has sold or entered into an unconditional agreement or arrangement to sell the specified capital markets product which the person has legal or beneficial ownership in but the settlement of the sale of that specified capital markets product has yet to be effected.

Persons obliged to comply with this Part and power of Authority to grant exemptions or extensions

137ZI. – (1) The obligation to comply with this Part extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

(2) This Part extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or class of persons from all or any provisions of this Part.

(4) The Authority may by notice in writing impose on a person exempted under subsection (3) or by regulations impose on a class of persons exempted under that

subsection, such conditions or restrictions as the Authority thinks fit and the person or class of persons shall comply with such conditions or restrictions.

(5) The Authority may at any time add to, vary or revoke any condition or restriction imposed under subsection (4).

(6) Any person who contravenes any condition or restriction imposed under subsection (4) (including any condition or restriction added or varied under subsection (5)) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

Disclosure of orders to short sell

137ZJ. – (1) A person who makes an order to sell, whether directly or indirectly, on any approved exchange any specified capital markets product which the person does not have an interest in at the time of the order (referred to as a short sell order) shall, before or at the time of such order, disclose to the approved exchange that the person does not have an interest in the specified capital markets product and disclose the quantity, volume or value of the specified capital markets product that the person does not have an interest in.

(2) Any person who is acting for or on behalf of the person referred to in subsection (1) shall not make an order to sell any specified capital markets product on an approved exchange if the person referred to in subsection (1) has not disclosed to the first-mentioned person whether the order is a short sell order before or at the time the sell order is made with the approved exchange.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Reporting of short position

137ZK. – (1) Where a person's short position in relation to any specified capital markets product is equivalent to or more than the short position threshold prescribed by the Authority, the person shall, at such time or times and in such form and manner as the Authority may prescribe, report to the Authority directly or through another person –

(a) such information on the first-mentioned person and the short position in relation to the specified capital markets product, as the Authority may prescribe; and

(b) any amendment, modification, variation or change to the information referred to in paragraph (a).

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

Power of the Authority to publish information

137ZL. The Authority may, in such form and manner and at such frequency as it thinks fit, publish the information or any part of the information, reported to the Authority under section 137ZK(1).

Power of Authority to make regulations

137ZM. – Without prejudice to section 341, the Authority may make regulations for purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[...]

PART VIII

SECURITIES INDUSTRY COUNCIL AND TAKE-OVER OFFERS

[...]

PART IX

SUPERVISION AND INVESTIGATION

Division 1 — Supervisory Powers

Subdivision (1) — Powers of Authority to require disclosure of information about ~~securities and futures contracts~~

Interpretation of this Subdivision

141. In this Subdivision, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to producing the document.

Acquisition and disposal of ~~securities or futures contracts~~ capital markets products, etc.

142.—(1) The Authority may, where it considers it necessary for the protection of investors, require the holder of a capital markets services licence to deal in ~~securities or trade in futures contracts~~ capital markets products, or an exempt person carrying on business in ~~any of those activities~~ such activity, to disclose to the Authority, in relation to any acquisition or disposal of ~~securities or futures contracts~~ any capital markets product —

(a) the name of the person from or through whom or on whose behalf the ~~securities or futures contracts were~~ capital markets product was acquired; or

(b) the name of the person to or through whom or on whose behalf the ~~securities or futures contracts were~~ capital markets product was disposed of,

and the nature of the instructions given to the holder or exempt person in respect of the acquisition or disposal.

(2) The Authority may require a person who has acquired, held or disposed of ~~securities or futures contracts~~ any capital markets product to disclose to the Authority whether he acquired, held or disposed of ~~those securities or futures contracts~~ the capital markets product, as trustee for, or on behalf of, another person (whether or not as a nominee), and if so —

(a) the name of that other person; and

(b) the nature of any instructions given to the first-mentioned person in respect of the acquisition, holding or disposal.

(3) The Authority may require a ~~securities exchange or futures~~ an approved exchange to disclose to the Authority, in relation to an acquisition or disposal of ~~securities~~ any capital markets product on the ~~securities~~ organised market of that ~~securities exchange or futures contracts on the futures market of that futures~~ approved exchange, the names of the members of that ~~securities exchange or futures~~ approved exchange who acted in the acquisition or disposal.

(4) The Authority may require an approved clearing house or a recognised clearing house for a ~~securities market or futures~~ an organised market to disclose to the Authority, in relation to any ~~dealing trading in securities~~ capital market products on that ~~securities market or trading in futures contracts on that futures~~ organised market, the names of the members of the approved clearing house or recognised clearing house who were concerned in any act or omission in relation to ~~the such~~ dealing or trading.

Exercise of certain powers in relation to ~~securities~~ capital markets products

143.—(1) This section shall apply where the Authority considers that —

- (a) it may be necessary to prohibit ~~dealing trading in securities of, securities-based derivative contracts, or made available by, units in a corporation~~ collective investment scheme under section ~~3245A~~;
- (aa) it may be necessary to give a direction or take any action under section ~~34 45 or 81S~~ in relation to ~~securities of, any~~ capital markets product; or ~~made available by, a corporation~~;
- (b) a person may have contravened any of the provisions of Part XII ~~in relation to securities of, or made available by, a corporation~~; or
- (c) a person may have contravened any of the provisions of Division 4 of Part IV of the Companies Act (Cap. 50) or Division 2 of Part VII in relation to securities in a corporation.
- (c) a person may have contravened any of the provisions of Part VII.

~~(2) The Authority may require an officer of a corporation referred to in subsection (1) to disclose to the Authority any information of which he is aware and which may have affected any dealing that has taken place, or which may affect any dealing that may take place, in securities of, or made available by, the corporation.~~

(3) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) any dealing in ~~securities of, or made available by, a corporation referred to in subsection (1);~~ capital markets products;
- (b) any advice given, or any report or analysis issued or published concerning ~~such securities~~ capital markets products, by the holder of a capital markets services licence to deal ~~in securities~~ in capital markets products, or a representative of such a holder;
- (c) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to deal in ~~securities~~ capital markets products and who has dealt in or given advice or issued or published a report or an analysis concerning such ~~securities~~ capital markets products;

- (d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is a person referred to in that paragraph; or
- (e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to deal in securitiescapital markets products, being a book relating to dealings in such securitiescapital markets products,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

Exercise of certain powers in relation to futures contracts

~~144.~~ (1) This section shall apply where the Authority considers that —

- ~~(a) it may be necessary to give a direction or take any action in relation to any trading in futures contracts under section 34;~~
- ~~(aa) it may be necessary to give a direction or take any action in relation to futures contracts under section 81; or~~
- ~~(b) a person may have contravened any of the provisions of Part XII in relation to futures contracts.~~

~~(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:~~

- ~~(a) any trading in futures contracts;~~
- ~~(b) any advice given, or any report or analysis issued or published concerning such futures contracts, by the holder of a capital markets services licence to trade in futures contracts, or a representative of such a holder;~~
- ~~(c) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to trade in futures contracts and has traded in or given advice or issued or published a report or an analysis concerning such futures contracts;~~
- ~~(d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons, at least one of whom is a person referred to in that paragraph; or~~
- ~~(e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to trade in futures contracts, being a book relating to trading in such futures contracts;~~

~~the Authority may require the person to disclose to the Authority the information that the person has about that matter.~~

Self-incrimination

145.—(1) A person is not excused from disclosing information to the Authority, under a requirement made of him under section 142,~~143~~ or ~~144~~143, on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to disclose by a requirement made of him under section 142,~~143~~ or ~~144~~143, that the statement might tend to incriminate him, that statement —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under section 148; but
- (b) shall be admissible in evidence for civil proceedings under Part XII.

[...]

Immunities

147.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 148, shall lie against any person for disclosing any information to the Authority if he had done so in good faith in compliance with a requirement of the Authority under section 142, ~~143~~ or ~~144~~143.

(2) Any person who complies with a requirement of the Authority under section 142, ~~143~~ or ~~144~~143 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

Offences

148.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under section 142, ~~143~~ or ~~144~~143 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(2) A person who, in purported compliance with a requirement of the Authority under section 142, ~~143~~ or ~~144~~143, discloses information, or makes a statement, that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

[...]

Division 2 — Power of Minister to Appoint Inspector for Investigating Dealings in Securities, etc.

Power of Minister to appoint inspectors

151.—(1) Notwithstanding anything in this Act, the Minister may, if he thinks it in the public interest to do so, appoint any person as an inspector to investigate any matter concerning ~~dealing in securities, trading in futures contracts or leveraged foreign exchange trading~~any dealing in capital markets products.

(2) An inspector appointed under subsection (1) shall have all the powers conferred upon an inspector under Part IX of the Companies Act (Cap. 50) and that Part shall, with the necessary modifications, apply to such investigation.

(3) Any inspector appointed under subsection (1) shall report the results of his investigation to the Minister and the Minister may, if he thinks it in the public interest to do so, cause the report to be printed and published.

[...]

PART X
ASSISTANCE TO
FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

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

“enforce” means enforce through criminal, civil or administrative proceedings;

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the ~~securities, futures or derivatives~~capital markets products industry of the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the ~~securities, futures or derivatives~~capital markets products industry of the foreign country of the regulatory authority concerned;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of —

- (a) a person operating an ~~securities market or futures~~organised market, an intermediary or any other person regulated by the regulatory authority; or
- (b) the issuance of or ~~trading in securities, or the trading in futures contracts~~dealing in capital markets products in the foreign country of the regulatory authority.

[...]

PART XI

INVESTOR COMPENSATION SCHEME

Interpretation of this Part

175. In this Part, “member”, in relation to an approved exchange, means a person who —

- (a) holds membership of any class or description of the approved exchange, whether or not he holds any share in the share capital of such exchange; and
- (b) is licensed by the Authority to carry on the business of dealing in ~~securities or trading in futures contracts~~ capital markets products, as the case may be.

[...]

Application of fund

186.—(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating any person (other than an accredited investor) who suffers pecuniary loss because of a defalcation committed —

- (a) in the course of, or in connection with, a dealing in ~~securities, or the trading of a futures contract~~ capital markets products;
- (b) by a member of an approved exchange or by any agent of such member; and
- (c) in relation to any money or other property which, after the establishment of the fidelity fund was entrusted to or received —
 - (i) by that member or by any of its agents for or on behalf of any other person; or
 - (ii) by that member either as the sole trustee or as trustee with any other person or persons, or by any of its agents as trustee or for or on behalf of the trustees of that money or property.

(2) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Bankruptcy Act (Cap. 20) an amount not greater than the amount that the Official Assignee or the trustee in bankruptcy, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt, who is a member of an approved exchange, are insufficient to satisfy any debts arising from ~~dealings in securities or trading in futures contracts~~ capital markets products that have been proved in the bankruptcy by creditors of the bankrupt member.

(3) Subsection (2) shall apply in the case of a member of an approved exchange who has made a voluntary arrangement with his creditors under Part V of the Bankruptcy Act in like manner as that subsection applies in the case of a member who has become bankrupt.

(4) For the purposes of subsection (3) —

- (a) a reference to a trustee in bankruptcy in subsection (2) shall be deemed to be a reference to a nominee within the meaning of Part V of the Bankruptcy Act;
- (b) a reference to debts proved in bankruptcy in subsection (2) shall be deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part V of the Bankruptcy Act; and
- (c) a reference to the bankrupt in subsection (2) shall be deemed to be a reference to the person who made the voluntary arrangement under Part V of the Bankruptcy Act.

(5) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to a liquidator of a member of an approved exchange that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member are insufficient to satisfy any debts arising from dealings in ~~securities or trading in futures contracts~~ capital markets products that have been proved in the liquidation of the member.

(6) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1), no claim for a payment under subsection (2) or (5) shall be made in respect of the same pecuniary loss.

(7) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (2), no claim for compensation under subsection (1) or for a payment under subsection (5) shall be made in respect of the same deficiency.

(8) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (5), no claim for compensation under subsection (1) or for a payment under subsection (2) shall be made in respect of the same deficiency.

(9) Moneys paid under subsection (2) or (5) may only be applied by the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator, as the case may be, for the purpose of satisfying debts arising from dealings in ~~securities or trading in futures contracts~~ capital markets products, and for no other purpose.

(10) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund under this Part for the purpose of —

- (a) compensating pecuniary loss under subsection (1); or
- (b) making a payment under subsection (2) or (5),

shall not, in respect of each member, exceed the prescribed amount.

(11) Subject to the provisions of this section —

- (a) the amount that may be paid out of the fidelity fund to each claimant under subsection (1) in relation to each member; or
- (b) the amount that the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator may pay to each creditor of a member from any amount paid to the

Official Assignee, trustee in bankruptcy, nominee or liquidator, as the case may be, under subsection (2) or (5),

shall not exceed the prescribed amount.

(12) For the purposes of subsections (10) and (11), any amount paid out of the fidelity fund shall, to the extent to which the fund is subsequently reimbursed therefor, be disregarded.

(13) In this section, “agent”, in relation to a member of an approved exchange —

(a) means a person who is a director, an officer, an employee or a representative of the member; and

(b) includes a person who has been, but at the time of any defalcation in question has ceased to be, a director, an officer, an employee or a representative of the member if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director, an officer, an employee or a representative of the member.

(14) In this section, any reference to dealing in ~~securities or trading of a futures contract~~capital markets products is a reference to such dealing ~~or trading~~ which is done or to be done —

(a) on the approved exchange which establishes, keeps and administers the fidelity fund; or

(b) through a trading linkage of the approved exchange with an overseas ~~exchange~~securities exchange or an overseas futures exchange.

[...]

PART XII
MARKET CONDUCT

Division 1 — Prohibited Conduct — ~~Securities~~Capital Markets Products

Application of this Division

196. This Division shall apply to —

- (a) acts occurring within Singapore in relation to —
 - (i) securities or securities-based derivative contracts of any corporation, whether formed or carrying on business in Singapore or elsewhere;
 - (ia) securities or securities-based derivative contracts of any business trust;
or
 - (ii) securities or securities-based derivative contracts listed for quotation or quoted on a ~~securities~~an organised market in Singapore or elsewhere;
 - (iii) units in a collective investment scheme listed for quotation or quoted on an organised market in Singapore or elsewhere; or
 - (iv) derivative contracts, whether dealt in Singapore or elsewhere; and
- (b) acts occurring outside Singapore, in relation to —
 - (i) securities or securities-based derivative contracts of a corporation that is formed or carrying on business in Singapore;
 - (ia) securities or securities-based derivative contracts of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;
or
 - (ii) securities or securities-based derivative contracts listed for quotation or quoted on a ~~securities~~an organised market in Singapore;
or
 - (iii) units in a collective investment scheme listed for quotation or quoted on an organised market in Singapore; or
 - (iv) derivative contracts dealt in or accessible from Singapore.

Interpretation of this Division

196A. In this Division —

“debenture” has the same meaning as in section 2 and, in relation to a business trust, means any debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

“securities” —

- (a) in relation to a corporation, for the purposes of sections 196(a)(i) and (b)(i), 198, 202 and 203, means —

- (i) ~~debentures, stocks or shares issued or any similar instrument representing a legal or proposed to be issued by a beneficial ownership interest in a corporation;~~
- (ii) ~~any right, option or derivative in respect of any such debentures, stocks or shares of a corporation;~~
- (iii) ~~any right under a contract for differences or under any such other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —~~
 - (A) ~~the value or price of any such debentures, stocks or shares;~~
 - (B) ~~the value or price of any group of any such debentures, stocks or shares; or~~
 - (C) ~~an index of any such debentures, stocks or shares; or~~
- (iv) ~~such other product instrument or class of products instruments as the Authority may prescribe,~~

but does not include —

- (AA) ~~futures contracts;~~ any unit of a collective investment scheme;
- (BB) bills of exchange;
- (CC) promissory notes;
- (DD) certificates of deposit issued by a bank or finance company; whether situated in Singapore or elsewhere; or
- (EE) such other ~~product instrument~~ or class of ~~products instruments~~ as the Authority may prescribe as not being securities;

(b) in relation to a business trust, for the purposes of sections 196(a)(ia) and (b)(ia), 198, 202 and 203, means —

- (i) units in a business trust;
- ~~(ii) derivatives of units in a business trust;~~
- (ii) debentures of a business trust;
- ~~(iv) any right, option or derivative in respect of any such debentures; or~~
- (iii) such other product instrument or class of products instruments as the Authority may prescribe,

but does not include —

- (A) ~~futures contracts;~~ any unit in a collective investment scheme;
- (B) bills of exchange;
- (C) promissory notes; ~~or~~

(CA) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere; or

(D) such other product instrument or class of products instruments as the Authority may prescribe as not being securities; and

(c) in any other case, has the same meaning as in section 2.

“securities-based derivative contract” —

(a) in relation to a corporation, for the purposes of sections 196(a)(i) and (b)(i), 198, 202 and 203, means any contract or arrangement where—

(i) a party to the contract or arrangement must, or may be required to, discharge its obligations under the contract or arrangement at some future time ;

(ii) the amount of the consideration, or the value of the contract or arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of any securities or securities index of that corporation or

and includes any contracts or arrangements that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

but does not include any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

(b) in relation to a business trust, for the purposes of sections 196(a)(ia) and (b)(ia), 198, 202 and 203, means any contract or arrangement where—

(i) a party to the contract or arrangement must, or may be required to, discharge its obligations under the contract or arrangement at some future time consideration ; and

(ii) the amount of the consideration, or the value of the contract or arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of any securities of that business trust;

and includes any contracts or arrangements that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

but does not include any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

(c) in any other case, has the same meaning as in section 2.

False trading and market rigging transactions

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

- (a) of active trading in any ~~securities~~capital markets products on a ~~securities~~an organised market; -or
- (b) with respect to the market for, or the price of, ~~such securities~~any capital markets products.

(1A) No person shall do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance of active trading in any ~~securities~~capital markets product on a ~~securities~~an organised market, or with respect to the market for, or the price of, ~~such securities~~any capital markets product if —

- (a) he knows that doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance; or
- (b) he is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance.

(2) No person shall, by means of any purchase or sale of any securities, securities-based derivative contracts, or units in a collective investment scheme that do not involve a change in the beneficial ownership of those securities, securities-based derivative contracts, or units, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities, securities-based derivative contracts, or units in a collective investment scheme.

(3) Without prejudice to the generality of subsection (1), a person who —

- (a) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of any securities, securities-based derivative contracts, or units in a collective investment scheme, being a transaction that does not involve any change in the beneficial ownership of the securities, securities-based derivative contracts, or units in a collective investment scheme;
- (b) makes or causes to be made an offer to sell any securities, securities-based derivative contracts, or units in a collective investment scheme at a specified price, where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities, securities-based

derivative contracts, or units in a collective investment scheme at a price that is substantially the same as the first-mentioned price; or

- (c) makes or causes to be made an offer to purchase any securities, securities-based derivative contracts, or units in a collective investment scheme at a specified price, where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities, securities-based derivative contracts, or units in a collective investment scheme at a price that is substantially the same as the first-mentioned price,

it shall be presumed that his purpose, or one of his purposes, for doing so is to create a false or misleading appearance of active trading in securities—~~on a securities,~~ securities-based derivative contracts, or units in a collective investment scheme on an organised market.

(4) The presumption under subsection (3) may be rebutted if the defendant establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities—~~on a,~~ securities-based derivative contracts, or units in a collective investment scheme on an organised market.

(5) For the purposes of this section, a purchase or sale of securities, securities-based derivative contracts, or units in a collective investment scheme does not involve a change in the beneficial ownership if a person who had an interest in the securities, securities-based derivative contracts, or units in a collective investment scheme before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, securities-based derivative contracts, or units, has an interest in the securities, securities-based derivative contracts, or units in a collective investment scheme after the purchase or sale.

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of securities, securities-based derivative contracts, or units in a collective investment scheme that did not involve a change in the beneficial ownership of those securities, securities-based derivative contracts, or units, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities, securities-based derivative contracts, or units in a collective investment scheme was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities, securities-based derivative contracts, or units in a collective investment scheme.

(7) The reference in subsection (3)(a) to a transaction of purchase or sale of securities, securities-based derivative contracts, or units in a collective investment scheme includes —

- (a) a reference to the making of an offer to purchase or sell securities, securities-based derivative contracts, or units in a collective investment scheme; and

- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to purchase or sell securities, securities-based derivative contracts, or units in a collective investment scheme.

Securities market manipulation

198.—(1) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities or securities-based derivative contracts of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities or securities-based derivative contracts of the corporation on ~~a securities~~ an organised market, with intent to induce other persons to subscribe for, purchase or sell securities or securities-based derivative contracts of the corporation or of a related corporation.

(1A) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities or securities-based derivative contracts of a business trust, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities or securities-based derivative contracts of the business trust on ~~a~~ an organised market, with intent to induce other persons to subscribe for, purchase or sell securities or securities-based derivative contracts of the business trust.

(2) A reference in subsection (1) or (1A) to transactions in securities or securities-based derivative contracts of a corporation or securities or securities-based derivative contracts of a business trust, as the case may be, includes —

- (a) a reference to the making of an offer to purchase or sell such securities or securities-based derivative contracts of the corporation or such securities or securities-based derivative contracts of the business trust, as the case may be; and
- (b) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities or securities-based derivative contracts of the corporation or such securities or securities-based derivative contracts of the business trust, as the case may be.

False or misleading statements, etc.

199. No person shall make a statement, or disseminate information, that is false or misleading in a material particular and is likely —

- (a) to induce other persons to subscribe for ~~securities~~ any securities, securities-based derivative contracts, or units in a collective investment scheme;
- (b) to induce the sale or purchase of any securities, securities-based derivative contracts, or units in a collective investment scheme by other persons; or
- (c) to have the effect of raising, lowering, maintaining or stabilising the market price of ~~securities~~ any securities, securities-based derivative contracts, or units in a collective investment scheme,

if, when he makes the statement or disseminates the information —

- (i) he does not care whether the statement or information is true or false; or
- (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Fraudulently inducing persons to deal in ~~securities~~capital markets products

200.—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in ~~securities~~capital markets products.

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1)(d), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

(3) In any proceedings against a person for a contravention of subsection (1), in relation to any dealing in capital market products in respect of securities, securities-based derivative contracts, or units in a collective investment scheme, the opinion of any registered or public accountant as to the financial position of any company at any time or during any period in respect of which he has made an audit or examination of the affairs of the company according to recognised audit practice shall be admissible, for any party to the proceedings, as evidence of the financial position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

Employment of manipulative and deceptive devices

201. No person shall, directly or indirectly, in connection with the subscription, purchase or sale of any ~~securities~~capital markets product —

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;
- (c) make any statement he knows to be false in a material particular; or

- (d) omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Bucketing

201A.—(1) No person shall knowingly execute, or hold himself out as having executed, an order for the purchase or sale of a derivative contract, without having effected a bona fide purchase or sale of that derivative contract in accordance with the order or with the business rules and practices of an organised market.

Manipulation of price of derivative contracts and cornering

201B. No person shall, directly or indirectly—

- (a) manipulate or attempt to manipulate the price of a derivative contract, or of any underlying thing which is the subject of such a derivative contract; or
(b) corner, or attempt to corner, any underlying thing which is the subject of a derivative contract.

Dissemination of information about illegal transactions

202.—(1) No person shall circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities or securities-based derivative contracts of a corporation or ~~any securities of a business trust~~ will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to securities or securities-based derivative contracts of that corporation, ~~— (or of a related corporation that is related to that corporation, or securities of) or~~ that business trust, as the case may be, which to his knowledge, was entered into or done in contravention of section 197, 198, 199, 200 or 201, or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201 if —

- (a) the person, or a person associated with the person, has entered into or purports to enter into any such transaction or has done or purports to do any such act or thing; or
(b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.

(2) No person shall circulate, disseminate, or authorise, or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of a class of derivative contracts will, or is likely to, rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to that class of derivative contracts by one or more persons, which to his knowledge was entered into or done in contravention of

section 197, 200, 201, 201A or 201B, or if entered into or done would be in contravention of section 197, 200, 201, 201A or 201B if —

- (a) the person, or a person associated with the person, has entered into or purport to enter into any such transaction or has done or purports to do any such act or thing; or
- (b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.

Continuous disclosure

203.—(1) -This section shall apply to —

- (a) an entity the securities or securities-based derivative contracts of which are listed for quotation on a ~~securities~~ approved exchange;
- (b) a trustee of a business trust, where the securities or securities-based derivative contracts of the business trust are listed for quotation on a ~~securities~~ approved exchange; or
- (c) a responsible person of a collective investment scheme, where the units ~~of~~ in the collective investment scheme are listed for quotation on a ~~securities~~ approved exchange,

if the entity, trustee or responsible person is required by the ~~securities~~ approved exchange under the listing rules or any other requirement of the ~~securities~~ approved exchange to notify the ~~securities~~ approved exchange of information on specified events or matters as they occur or arise for the purpose of the ~~securities~~ approved exchange making that information available to a ~~securities~~ the organised market operated by the ~~securities~~ that approved exchange.

(2) The persons specified in subsection (1)(a), (b) or (c) shall not intentionally, recklessly or negligently fail to notify the ~~securities~~ approved exchange of such information as is required to be disclosed by the ~~securities~~ that approved exchange under the listing rules or any other requirement of the ~~securities~~ approved exchange.

(3) Notwithstanding section 204, a contravention of subsection (2) shall not be an offence unless the failure to notify is intentional or reckless.

[...]

*Division 2 — Prohibited Conduct —
Futures Contracts, Leveraged
Foreign Exchange Trading*

Application of this Division

205. This Division shall apply to —

- ~~(a) acts occurring within Singapore, in relation to—~~
- ~~(i) futures contracts, whether traded on a futures market in Singapore or elsewhere; or~~
 - ~~(ii) foreign exchange in connection with leveraged foreign exchange trading, whether in Singapore or elsewhere; and~~
- ~~(b) acts occurring outside Singapore, in relation to—~~
- ~~(i) futures contracts traded on a futures market in Singapore;~~
 - ~~(ii) foreign exchange in connection with leveraged foreign exchange trading in Singapore; or~~
 - ~~(iii) foreign exchange in connection with leveraged foreign exchange trading that is accessible from Singapore.~~

False trading

~~206.— (1) No person shall do any thing, cause any thing done or engage in any course of conduct, if his purpose, or any of his purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, is to create a false or misleading appearance—~~

~~(a) of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading; or~~

~~(b) with respect to the market for, or the price of, futures contracts on a futures market or foreign exchange in connection with leveraged foreign exchange trading.~~

~~(2) No person shall do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading, or with respect to the market for, or the price of, futures contracts on a futures market or foreign exchange in connection with leveraged foreign exchange trading, if—~~

~~(a) he knows that doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance; or~~

~~(b) he is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance.~~

[Act 34 of 2012 wef 18/03/2013]

Bucketing

~~207.— (1) No person shall knowingly execute, or hold himself out as having executed, an order for the purchase or sale of a futures contract on a futures market, without having effected a bona fide purchase or sale of the futures contract in accordance with the business rules and practices of the futures market.~~

~~(2) No person shall knowingly execute, or hold himself out as having executed, an order to make a purchase or sale of foreign exchange in connection with leveraged foreign exchange trading, without having effected a bona fide purchase or sale in accordance with the order.~~

[FTA, s. 51]

Manipulation of price of futures contract and cornering

208. No person shall, directly or indirectly—

(a) manipulate or attempt to manipulate the price of a futures contract that may be dealt in on a futures market, or of any commodity which is the subject of such futures contract; or

(b) corner, or attempt to corner, any commodity which is the subject of a futures contract.

[FTA, s. 53]

Fraudulently inducing persons to trade in futures contracts

209.—(1) No person shall—

(a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be false, misleading or deceptive;

(b) by any dishonest concealment of material facts;

(c) by the reckless making or publishing of any statement, promise or forecast that is false, misleading or deceptive; or

(d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular, induce or attempt to induce another person to trade in a futures contract or engage in leveraged foreign exchange trading.

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1)(d), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

[FTA, s. 55]

Employment of fraudulent or deceptive devices, etc.

210. No person shall, directly or indirectly, in connection with any transaction involving trading in a futures contract or leveraged foreign exchange trading—

(a) employ any device, scheme or artifice to defraud;

(b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;

(c) make any false statement of a material fact; or

(d) omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

[FTA, s. 54]

Dissemination of information about illegal transactions

211. No person shall circulate, disseminate, or authorise, or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of a class of futures contracts or foreign exchange in connection with leveraged foreign exchange trading will, or is likely to, rise or fall or be maintained because of the market operations of one or more persons which, to his knowledge, are conducted in contravention of section 206, 207, 208, 209 or 210 if—

~~(a) the person, or a person associated with the person, has conducted such market operations; or~~

~~(b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.~~

~~[FTA, s. 52]~~

Penalties under this Division

~~212. (1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.~~

~~(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —~~

~~(a) a court has made an order against him for the payment of a civil penalty under section 232; or~~

~~(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5), in respect of that contravention.~~

Division 3 — Insider Trading

Application of this Division

213. This Division shall apply to —

(a) acts occurring within Singapore, in relation to —

(i) securities or securities-based derivative contracts of any corporation, whether formed or carrying on business in Singapore or elsewhere;

(ia) securities or securities-based derivative contracts of any business trust;

(ii) securities or securities-based derivative contracts listed for quotation or quoted on a securities an organised market in Singapore or elsewhere; ~~or~~

(iii) securities ~~traded~~ based derivative contracts, whether dealt in Singapore or elsewhere; or

(iv) units in a collective investment scheme listed for quotation or quoted on a futures an organised market in Singapore or elsewhere; ~~—and~~

(b) acts occurring outside Singapore, in relation to —

(i) securities or securities-based derivative contracts of a corporation that is formed or carries on business in Singapore;

(ia) securities or securities-based derivative contracts of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;

- (ii) securities or securities-based derivative contracts listed for quotation or quoted on a securities an organised market in Singapore; or
- (iii) securities ~~traded~~ based derivative contracts dealt in or accessible from Singapore; or
- (iv) units in a collective investment scheme listed for quotation or quoted on a futures an organised market in Singapore.

Interpretation of this Division

214. In this Division —

“debenture” has the same meaning as in section 2 and, in relation to a business trust, means a debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

“financial performance”, in relation to a business trust, means the performance of the business relating to the trust property of the business trust which is managed and operated by the trustee of the business trust;

“information” includes —

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;
- (b) matters relating to the intentions, or the likely intentions, of a person;
- (c) matters relating to negotiations or proposals with respect to —
 - (i) commercial dealings;
 - (ii) dealing in capital markets products in respect of securities, securities-based derivative contracts, or units in a collective investment scheme; or ~~(iii) trading in futures contract~~;
- (d) information relating to the financial performance of a corporation or business trust, or otherwise;
- (e) information that a person proposes to enter into, or had previously entered into one or more transactions or agreements in relation to securities, securities-based derivative contracts, or units in a collective investment scheme or has prepared or proposes to issue a statement relating to such securities, securities-based derivative contracts, or units in a collective investment scheme; and
- (f) matters relating to the future;

“purchase”, in relation to securities-based derivative contracts, includes, in the case of an option contract under which a party acquires an option or right from another party, acquiring the option or right under the contract, or taking an assignment of the option or right, whether or not on another’s behalf;

“securities” means —

(a) in relation to a corporation, for the purposes of sections 213(a)(i) and (b)(i) and 218, means —

- ~~(i) debentures, stocks or shares issued or any similar instrument representing a legal or proposed to be issued by a beneficial ownership interest in a corporation;~~
- ~~(ii) any right, option or derivative in respect of any such debentures, stocks or shares;~~
- ~~(iii) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —~~
 - ~~(A) the value or price of any such debentures, stocks or shares;~~
 - ~~(B) the value or price of any group of any such debentures, stocks or shares; or~~
 - ~~(C) an index of any such debentures, stocks or shares;~~
- ~~(iv) a futures contract only if the commodity which is the subject of the futures contract is a share or stock debentures of a corporation; or~~
- (iii) such other product instrument or class of products instruments as the Authority may prescribe,

but does not include —

- ~~but does not include~~ (A) any unit of a collective investment scheme
- (B) bills of exchange;
- (C) promissory notes;
- (D) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere; or
- (E) such product other instrument or class of products instruments as the Authority may prescribe as not being securities;

(b) in relation to a business trust, for the purposes of sections 213(a)(ia) and (b)(ia) and 218(1A) and (4A) —

- (i) units in a business trust;
- ~~(ii) derivatives of units in a business trust;~~
- (iii) debentures of a business trust;
- ~~(iv) any right, option or derivative in respect of any such debentures; or~~
- (iii) such other product instrument or class of products instruments as the Authority may prescribe,

but does not include such product or class of products as the Authority may prescribe as not being securities; —

- (A) any unit in a collective investment scheme;

(B) bills of exchange;

(C) promissory notes;

(D) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere; or

(E) such other instrument or class of instruments as the Authority may prescribe as not being securities; and

(c) in any other case, has the same meaning as in section 2;

~~(e) in any other case —~~

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

~~(ii) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;~~

~~(iii) any right, option or derivative in respect of any such debentures, stocks or shares;~~

~~(iv) any unit in a collective investment scheme; (v) any unit, or derivative of a unit, in a business trust;~~

~~(vi) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —~~

~~(A) the value or price of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust;~~

~~(B) the value or price of any group of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust; or~~

~~(C) an index of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust;~~

~~{2/2009 wef 20/04/2009}~~

~~(vii) a futures contract only if the commodity which is the subject of the futures contract is a share or share index, or stock or stock index; or~~

~~{2/2009 wef 20/04/2009}~~

~~(viii) such other product or class of products as the Authority may prescribe, but does not include —~~

~~(AA) bills of exchange;~~

~~(BB) promissory notes;~~

~~{2/2009 wef 20/04/2009}~~

~~(CC) certificates of deposit issued by a bank or finance company; or~~

~~(DD) such other product or class of products as the Authority may prescribe as not being securities; and~~

“securities-based derivatives contracts” means —

(a) in relation to a corporation, for the purposes of sections 213(a)(i) and (b)(i) and 218, any contract, arrangement where —

(i) a party to the contract or arrangement must, or may be required to, discharge its obligations under the contract or arrangement at some future time;

(ii) the amount of consideration, or the value of the contract or arrangement, is ultimately determined, derived from or varies by

reference to (wholly or in part) the value or amount of any securities or securities index of, or made available by, that corporation;

and includes any contracts or arrangements that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

but does not include any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

(b) in relation to a business trust, for the purposes of sections 213(a)(ia) and (b)(ia) and 218, means any contract, arrangement where —

(i) a party to the contract or arrangement must, or may be required to, discharge its obligations under the contract or arrangement at some future time; and

(ii) the amount of the consideration, or the value of the contract or arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of units of any securities of that business trust;

and includes any contracts or arrangements that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

but does not include any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed by the Authority by regulations made under section 341 for the purpose of this paragraph;

(c) in any other case, has the same meaning as in section 2.

“sell”, in relation to securities-based derivative contracts, includes, in the case of an option contract under which a party acquires an option or right from another party —

(a) grant or assign the option or right; or

(b) take, or cause to be taken, such action as releases the option or right, whether or not on another’s behalf;

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

Information generally available

215. For the purposes of this Division, information is generally available if —

(a) it consists of readily observable matter;

(b) without limiting the generality of paragraph (a) —

- (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities, securities-based derivative contracts, or units in a collective investment scheme of a kind whose price or value might be affected by the information; and
- (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
- (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
 - (i) information referred to in paragraph (a);
 - (ii) information made known as referred to in paragraph (b)(i).

Material effect on price or value of securities

216. For the purposes of this Division, a reasonable person would be taken to expect information to have a material effect on the price or value of securities, securities-based derivative contracts, or units in a collective investment scheme if the information would, or would be likely to, influence persons who commonly invest in securities such securities, securities-based derivative contracts or units in deciding whether or not to subscribe for, buy or sell the first-mentioned securities, securities-based derivative contracts, or units in a collective investment scheme.

Trading and procuring trading in securities, securities-based derivative contracts or units in collective investment schemes

217.—(1) For the purposes of this Division, trading in securities, securities-based derivative contracts, or units in a collective investment scheme that is ordinarily permitted on ~~the securities market or futures~~ an organised market shall be taken to be permitted on that ~~securities market or futures~~ organised market even though trading in any such securities ~~on that~~, securities-based derivative contracts, or futures units on that organised market is suspended.

(2) For the purposes of this Division but without limiting the meaning that the expression “procure” has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

Prohibited conduct by connected person in possession of inside information

218.—(1) Subject to this Division, where —

- (a) a person who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of the securities or securities-based derivative contracts of that corporation; and
- (b) the connected person knows or ought reasonably to know that —
 - (i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities or securities-based derivative contracts of that corporation,

subsections (2), (3), (4), (5) and (6) shall apply.

(1A) Subject to this Division, where —

(a) a person who is connected to any corporation, where such corporation —

(i) in relation to a business trust, acts as its trustee or manages or operates the business trust; or

(ii) in relation to a collective investment scheme that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any units of which are listed on a ~~securities~~ an approved exchange, is the trustee or manager of the scheme,

possesses information concerning that corporation, business trust or scheme, as the case may be, that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivative contracts of that corporation, of securities or securities-based derivative contracts of that business trust, or of units in that scheme, as the case may be; and

(b) the connected person knows or ought reasonably to know that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities or securities-based derivative contracts of that corporation, of those securities or securities-based derivative contracts of that business trust or of those units in that scheme, as the case may be,

subsections (2), (3), (4A), (5) and (6) shall apply.

[1/2005]

(2) The connected person must not (whether as principal or agent) —

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivative contracts, or units in referred to in subsection (1) or (1A), as the case may be; or

(b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivative contracts, or units referred to in subsection (1) or (1A), as the case may be.

~~(3) Where trading in the securities referred to in subsection (1) or (1A) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the~~

(3) The connected person must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the connected person knows, or ought reasonably to know, that the other person would or would be likely to —

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivative contracts, or units; or

(b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivative contracts, or units.

(4) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation referred to in subsection (1), where the prosecution or plaintiff proves that the connected person was at the material time —

(a) in possession of information concerning the corporation to which he was connected; and

(b) the information was not generally available,

it shall be presumed, until the contrary is proved, that the connected person knew at the material time that —

(i) the information was not generally available; and

(ii) if the information were generally available, it might have a material effect on the price or value of securities or securities-based derivative contracts of that corporation.

(4A) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation which —

(a) in relation to a business trust, acts as its trustee or manages or operates the business trust; or

(b) in relation to a collective investment scheme, is the trustee or manager of the scheme,

as the case may be, referred to in subsection (1A), where the prosecution or plaintiff proves that the connected person was at the material time —

(i) in possession of information concerning the corporation, business trust or scheme, as the case may be; and

(ii) the information was not generally available,

it shall be presumed, until the contrary is proved, that the connected person knew at the material time that —

(A) the information was not generally available; and

(B) if the information were generally available, it might have a material effect on the price or value of securities or securities-based derivative contracts of that

corporation, of securities or securities-based derivative contracts of that business trust, or of units in the scheme, as the case may be.

(5) In this Division —

- (a) “connected person” means a person referred to in subsection (1) or (1A) who is connected to a corporation; and
- (b) a person is connected to a corporation if —
 - (i) he is an officer of that corporation or of a related corporation;
 - (ii) he is a substantial shareholder in that corporation or in a related corporation; or
 - (iii) he occupies a position that may reasonably be expected to give him access to information of a kind to which this section applies by virtue of —
 - (A) any professional or business relationship existing between himself (or his employer or a corporation of which he is an officer) and that corporation or a related corporation; or
 - (B) being an officer of a substantial shareholder in that corporation or in a related corporation.

(6) In subsection (5), “officer”, in relation to a corporation, includes —

- (a) a director, secretary or employee of the corporation;
- (b) a receiver, or receiver and manager, of property of the corporation;
- (c) a judicial manager of the corporation;
- (d) a liquidator of the corporation; and
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

Prohibited conduct by other persons in possession of inside information

219.—(1) Subject to this Division, where —

- (a) a person who is not a connected person referred to in section 218 (referred to in this section as the insider) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities, securities-based derivative contracts, or units in a collective investment scheme; and
- (b) the insider knows that —
 - (i) the information is not generally available; and
 - (ii) if it were generally available, it might have a material effect on the price or value of those securities, securities-based derivative contracts, or units.

subsections (2) and (3) shall apply.

(2) The insider must not (whether as principal or agent) —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivative contracts, or units; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivative contracts, or units.

~~(3) Where trading in the securities referred to in subsection (1) is permitted on the securities market of a securities exchange or futures market of a futures exchange,~~
(3) The insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivative contracts, or units; or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivative contracts, or units.

[...]

Exception for underwriters

223.—(1) Sections 218(2) and 219(2) shall not apply in respect of —

- (a) subscribing for, or purchasing, securities, securities-based derivative contracts, or units in a collective investment scheme under an underwriting agreement or a sub-underwriting agreement;
- (b) entering into an agreement referred to in paragraph (a); or
- (c) selling securities, securities-based derivative contracts, or units in a collective investment scheme subscribed for, or purchased, under an agreement referred to in paragraph (a).

(2) Sections 218(3) and 219(3) shall not apply in respect of the communication of information in relation to securities—, securities-based derivative contracts, or units in a collective investment scheme —

- (a) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities, securities-based derivative contracts, or units; or

(b) by a person who may be required under an underwriting agreement to subscribe for, or purchase, any such securities, securities-based derivative contracts, or units if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:

- (i) enter into a sub-underwriting agreement in relation to any such securities, securities-based derivative contracts, or units;
- (ii) subscribe for, or purchase, any such securities.—, securities-based derivative contracts, or units.

Exception for purchase pursuant to legal requirement

224.—(1) Sections 218(2) and 219(2) shall not apply in respect of the purchase of securities, securities-based derivative contracts, or units in a collective investment scheme pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

(2) Sections 218(2) and 219(2) shall not apply in respect of the sale of securities, securities-based derivative contracts, or units in a collective investment scheme pursuant to any requirement imposed by the Government or any requirement imposed under any written law or order of court.

[...]

Exception for knowledge of person's own intentions or activities

228. An individual does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives or units in a collective investment scheme merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives or units.

Exception for corporations and its officers, etc.

229.—(1) A corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivative contracts, or units in a collective investment scheme merely because it is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivative contracts, or units.

(2) Subject to subsection (3), a corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivative contracts, or units in a collective investment scheme merely because an officer of the corporation is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivative contracts, or units.

(3) Subsection (2) shall not apply unless the officer of the corporation mentioned in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

(4) Subject to subsection (5), a person does not contravene section 218(2) or 219(2) by entering into a transaction or agreement on behalf of a corporation in relation to securities, securities-based derivative contracts, or units in a collective investment scheme merely because he is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivative contracts, or units.

(5) Subsection (4) shall not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the corporation or in the course of acting as an agent of the corporation.

Unsolicited transactions by holder of capital markets services licence and representatives

230.—(1) The holder of a capital markets services licence to deal in ~~securities or trade in futures contracts~~capital markets products, or a representative of such a holder does not contravene section 218(2) or 219(2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, ~~securities that are traded on the stock market or futures market if —~~, securities-based derivative contracts, or units in a collective investment scheme if —

- (a) the holder or representative entered into the transaction or agreement concerned on behalf of another person (referred to in this section as the principal) under a specific instruction by the principal to enter into that transaction or agreement which was not solicited by the holder or representative;
- (b) the holder or representative has not given any advice to the principal in relation to the transaction or agreement or otherwise sought to procure the principal's instructions to enter into the transaction or agreement; and
- (c) the principal is not an associate of the holder or representative.

(2) Nothing in this section shall affect the application of section 218(2) or 219(2) in relation to the principal.

[...]

Civil liability

234.—(1) A person who has acted in contravention of any of the provisions in this Part (referred to in this section and sections 235 and 236 as the contravening person) shall, if he had gained a profit or avoided a loss as a result of that contravention, whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to any person (referred to in this section and sections 235 and 236 as the claimant) who —

- (a) contemporaneously with the contravention, had ~~subscribed for, purchased or sold securities, or entered into futures contract, or contracts or~~

~~arrangements~~been dealing in connection with leveraged foreign exchange trading, capital markets products of the same description; and

(b) had suffered loss by reason of the difference between —

(i) the price at which the ~~securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading~~capital markets products were dealt in ~~or traded~~ contemporaneously with the contravention; and

(ii) the price at which the ~~securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading~~capital markets products, would have been likely to have been so dealt in ~~or traded~~ at the time of the contemporaneous dealing ~~or trading~~ if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1), as the case may be, had been generally available; or

(B) in any other case, the contravention had not occurred.

(1A) Without prejudice to subsection (1), the contravening person shall, whether or not he had gained a profit or avoided a loss as a result of that contravention, and whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to the claimant, if —

(a) the contravening person has contravened section 199, 200, 201, 209 or 210, in connection with any ~~subscription, purchase or sale of securities, any trading~~dealing in futures contracts or any leveraged foreign exchange trading, by capital markets products by —

(i) making, disseminating or publishing any false, misleading or deceptive statement, information, promise or forecast; or

(ii) concealing or omitting to state any material fact; and

(b) the claimant —

(i) in reliance on that statement, information, promise or forecast or in ignorance of that concealed or omitted material fact, had (whether contemporaneously with the contravention or otherwise) ~~subscribed for, purchased or sold any securities, or entered into any futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading~~been dealing in capital markets products, of the same description; and

(ii) had suffered loss.

(2) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant

referred to in subsection (1)(b), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable.

[Act 34 of 2012 wef 18/03/2013]

(2A) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1A) is —

(a) in any case where the claimant had contemporaneously with the contravention ~~subscribed for, purchased or sold any securities, or entered into any futures contract, or contracts or arrangements~~been dealing in connection with leveraged foreign exchange trading, capital markets products of the same description, and had suffered the loss referred to in subsection (1)(b), any one of the following amounts that is elected by the claimant:

(i) the amount of the loss suffered by the claimant referred to in subsection (1)(b), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable; or

(ii) the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(a)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(a)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L; or

(b) in any other case, the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(a)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(a)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L.

(3) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, shall also be available to a defendant to an action under this section in respect of the contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the dealing ~~or trading~~ in which the loss occurred.

(5) For the purposes of this section, in determining whether any ~~dealing in securities, trading in futures contracts or leveraged foreign exchange trading~~ dealing in capital markets products took place contemporaneously with the contravention, the court shall take into account the following matters:

- (a) the volume of ~~securities, futures contracts, or contracts in connection with leveraged foreign exchange trading~~ capital markets products of the same description dealt in ~~or traded~~ between the date and time of the contravention and the date and time of the dealing in ~~securities, trading in futures contracts, or leveraged foreign exchange trading~~ the capital markets products;
- (b) the date and time the contravention, if it was effected by a transaction or transactions involving the ~~subscription for securities, purchase or sale of securities, trading in futures contracts or leveraged foreign exchange trading~~ dealing in capital markets products, was cleared and settled;
- (c) whether the dealing in ~~securities, trading in futures contracts, or leveraged foreign exchange trading~~ capital markets products took place before or after the contravention;
- (d) in the case of a contravention under section 203, 218 or 219, whether the dealing in capital markets products in respect of securities, securities-based derivative contracts, or units in a collective investment scheme took place before or after the information to which the contravention relates became generally known;
- (e) such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

(6) In this section and section 236, “maximum recoverable amount”, in respect of each contravention by a contravening person means —

- (a) the amount of the profit that the contravening person gained; or
- (b) the amount of the loss that he avoided,

as a result of the contravention, after deducting all amounts of compensation that the contravening person had previously been ordered by a court to pay, in respect of the same contravention, to other claimants (each being a claimant whose claim is one where the amount of compensation that the contravening person is liable to pay is specified under subsection (2) or (2A)(a)(i)).

[...]

Civil liability of corporation for contravention by employee or officer

236D.—(1) A defendant corporation which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236B(1) or 236C(1) shall, whether or not it had been convicted or had a civil penalty imposed on it, be liable to pay compensation to any person (referred to in this section as the claimant) who —

(a) contemporaneously with the contravention by the contravening person, had ~~subscribed for, purchased or sold securities, or entered into any futures contract, or contracts or arrangements~~ been dealing in connection with leveraged foreign exchange trading, capital markets products of the same description; and

(b) had suffered loss by reason of the difference between —

(i) the price at which the ~~securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading~~ capital markets products were dealt in ~~or traded~~ contemporaneously with the contravention by the contravening person; and

(ii) the price at which the ~~securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading~~ capital markets products would have been likely to have been so dealt in ~~or traded~~ at the time of the contemporaneous dealing ~~or trading~~ if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1), as the case may be, had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.

(2) The amount of compensation that the defendant corporation is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(a) by the contravening person under an order of court or an agreement to pay; or

(b) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

(3) Any defence that would be available to —

(a) the contravening person if he were prosecuted for his contravention; or

(b) the defendant corporation if it were prosecuted under section 236B(1) or had an action brought against it under section 236C(2),

shall also be available to the defendant corporation in an action under this section in respect of that contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing ~~or trading~~ in which the loss occurred.

(5) In determining whether the dealing ~~or trading~~ took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters set out in section 234(5).

(6) In this section, “maximum recoverable amount” means —

(a) the amount of profit that the defendant corporation gained; or

(b) the amount of the loss that it avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant corporation had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[...]

Civil liability of partnership or limited liability partnership for contravention by partner, etc.

236G.—(1) A defendant partnership which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236E(1) or 236F(1) shall, whether or not the partners of the partnership or the limited liability partnership had been convicted or the partnership or limited liability partnership had a civil penalty imposed on it, be liable to pay compensation to any person (referred to in this section as the claimant) who —

(a) contemporaneously with the contravention by the contravening person, had ~~subscribed for, purchased or sold securities, or entered into any futures contract, or contracts or arrangements~~ been dealing in connection with leveraged foreign exchange trading, capital markets products of the same description; and

(b) had suffered loss by reason of the difference between —

(i) the price at which the ~~securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading~~ capital markets products were dealt in ~~or traded~~ contemporaneously with the contravention by the contravening person; and

(ii) the price at which the ~~securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading~~ capital markets products would have been likely to have been so

dealt in ~~or traded~~ at the time of the contemporaneous dealing ~~or trading~~ if

- (A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1), as the case may be, had been generally available; or
- (B) in any other case, the contravention by the contravening person had not occurred.

(2) The amount of compensation that the defendant partnership is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

- (a) by the contravening person under an order of court or an agreement to pay; or
- (b) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

(3) Any defence that would be available to —

- (a) the contravening person if he were prosecuted for his contravention; or
- (b) the defendant partnership if it were prosecuted under section 236E(1) or had an action brought against it under section 236F(2),

shall also be available to the defendant partnership in an action under this section in respect of that contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing ~~or trading~~ in which the loss occurred.

(5) In determining whether the dealing ~~or trading~~ took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters set out in section 234(5).

(6) In this section, “maximum recoverable amount” means —

- (a) the amount of profit that the defendant partnership gained; or
- (b) the amount of the loss that it avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant partnership had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009 wef 01/10/2012]

[...]

Civil liability of officer of corporation, etc.

236L.—(1) A defendant who has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by a contravening person referred to in section 236H(1) shall, whether or not the defendant had been convicted under section 331 or had a civil penalty imposed on him under section 236H, be liable to pay compensation to any person (referred to in this section as the claimant) who —

(a) contemporaneously with the contravention by the contravening person, had ~~subscribed for, purchased or sold securities, or entered into futures contract, or contracts or arrangements~~ been dealing in connection with leveraged foreign exchange trading, capital markets products of the same description; and

(b) had suffered loss by reason of the difference between —

(i) the price at which the ~~securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading~~ capital markets products were dealt in ~~or traded~~ contemporaneously with the contravention by the contravening person; and

(ii) the price at which the ~~securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading~~ capital markets products would have been likely to have been so dealt in ~~or traded~~ at the time of the contemporaneous dealing ~~or trading~~ if —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1), as the case may be, had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.

(2) The amount of compensation that the defendant is liable to pay to the claimant is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(a) by the contravening person under an order of court or an agreement to pay; or

(b) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

(3) Any defence that would be available to —

(a) the contravening person if it were prosecuted for its contravention; or

(b) the defendant if he were prosecuted under section 331 in respect of that contravention,

shall also be available to the defendant in an action under this section in respect of that contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing ~~or trading in~~ which the loss occurred.

(5) In determining whether a dealing in ~~securities, trading in futures contracts, or leveraged foreign exchange trading~~ capital markets products took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters referred to in section 234(5)(a) to (e).

(6) In this section, “maximum recoverable amount” means —

- (a) the amount of the profit that the defendant gained; or
- (b) the amount of the loss that he avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[...]

PART XIII

OFFERS OF INVESTMENTS

[In this Part, provisions that have been highlighted are provisions that were amended under the Securities and Futures (Amendment) Bill 2012, which has yet to commence.]

Division 1 — ~~Shares and Debentures~~ Investments

Subdivision (1) — Interpretation

Preliminary provisions

239.—(1) In this Division —

“borrowing entity” means an entity that is or will be under a liability (whether or not such liability is present or future) to repay any money received by it in response to an invitation to subscribe for or purchase relevant debentures of the entity;

“control”, in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

- (a) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and
- (b) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

~~“debenture” includes debenture stock, bonds, notes and any other debt securities issued by a corporation or any other entity, whether or not constituting a charge on the assets of the issuer but does not include —~~

- ~~— (a) a cheque, letter of credit, order for the payment of money or bill of exchange;~~
- ~~— (b) subject to the regulations made under this Act, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months; or~~
- ~~— (c) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word “debenture” does not include a prescribed document or a document~~

~~included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;~~

“debenture issuance programme” means any scheme or arrangement by an entity for the issue of relevant debentures or units of relevant debentures where only part of the maximum amount or aggregate number of relevant debentures or units of relevant debentures under the programme is offered initially and a further tranche or tranches may be offered subsequently;

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

“guarantor entity”, in relation to a borrowing entity, means an entity that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing entity in response to an invitation to subscribe for or purchase relevant debentures of the borrowing entity;

“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

“investments” means securities, securities-based derivative contracts and relevant promissory notes;

“issuer” means,

(a) in relation to an offer of securitiesinvestments (other than units or derivatives of units in a business trust, means the entity that issued or will be issuing the securitiesinvestments being offered;

(b) in relation to an offer of units in a business trust, the trustee of the business trust in its capacity as the trustee that issued or will be issuing such units; and

(c) in relation to an offer of derivatives of units in a business trust, the trustee of the business trust in its capacity as the trustee, or any other entity that issued or will be issuing such derivative of units;

~~“limited liability partnership” means any limited liability partnership whether registered in Singapore under the Limited Liability Partnerships Act (Cap. 163A) or otherwise;~~

“minimum subscription”, in relation to any ~~securities~~investments offered for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which must be raised by the issue of the investments~~securities~~ so offered, failing which no investments~~securities~~ will be allotted or issued;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, investments~~securities~~ to be issued or sold and which contains the information required to be included in a prospectus under section 243, except for such information as may be prescribed by the Authority;

“product highlights sheet” means a product highlights sheet referred to in section 240AA(1);

“profile statement” means a profile statement referred to in section 240(4);

“promoter”, in relation to a prospectus issued by or in connection with an entity or business trust, means a promoter of the entity or business trust, as the case may be, who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of securities investments, and includes any document deemed to be a prospectus under section 257, but does not include —

(a) a profile statement; ~~or~~

(b) any material, advertisement or publication which is authorised by section 251 (other than subsection (5)); or

(c) a product highlights sheet;

“recognised securities exchange” means a corporation which has been declared by the Authority, by order published in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

“related party” means —

(a) in relation to an entity —

(i) a director or an equivalent person of the entity;

(ii) the chief executive officer or equivalent person of the entity;

(iii) a person who controls the entity;

(iv) a related corporation;

(v) any other entity controlled by it;

(vi) any other entity controlled by the person referred to in sub-paragraph (iii); and

(vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and

(b) in relation to an individual —

(i) his immediate family;

(ii) a trustee of any trust of which the individual or any member of the individual’s immediate family is —

(A) a beneficiary; or

(B) where the trust is a discretionary trust, a discretionary object,

when the trustee acts in that capacity; and

- (iii) any corporation in which he and his immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

“relevant debentures” means, subject to the regulations made under this Act, a debenture other than a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months;

“relevant promissory notes” means any of the following:

(a) a promissory note with a face value of less than \$100,000; or

(b) a promissory note with a maturity period of more than 12 months;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 241(1), as the case may be;

~~“securities” means —~~

~~— (a) shares or units of shares of a corporation;~~

~~— (b) debentures or units of debentures of an entity;~~

~~— (c) interests in a limited partnership or limited liability partnership formed in Singapore or elsewhere; or~~

~~— (d) such other product or class of products as the Authority may prescribe, but does not include such other product or class of products as the Authority may prescribe as not being securities;~~

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

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 241(1), as the case may be;

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

“trust property” has the same meaning as in section 2 of the Business Trusts Act;

“underlying entity”, in relation to an offer of units of shares or relevant debentures, means the entity the shares or relevant debentures of which are the subject of the offer;

“unit”, in relation to a share or relevant debenture, means any right or interest, whether legal or equitable, in the share or relevant debenture, by whatever name called, and includes any option to acquire any such right or interest in the share or relevant debenture.

(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division —

- (a) any invitation to a person to deposit money with or to lend money to an entity shall be deemed to be an offer of relevant debentures of the entity; and
- (b) any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation shall be deemed to be a relevant debenture.

(3A) Notwithstanding subsection (3) —

- (a) any invitation to a person by a prescribed entity to make a deposit with the prescribed entity is not an offer of relevant debentures; and
- (b) the following documents issued or intended or required to be issued by a prescribed entity are not relevant debentures:
 - (i) any certificate of deposit;
 - (ii) any other document acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the prescribed entity in respect of any deposit that is or may be made with the prescribed entity.

(4) In subsections (3A) and (5) —

“deposit” has the same meaning as in section 4B(4) of the Banking Act (Cap. 19);

“prescribed entity” means —

- (a) any bank licensed under the Banking Act; or
- (b) any entity or any entity of a class which has been declared by the Authority, by order published in the *Gazette*, to be a prescribed entity for the purposes of this subsection.

(4A) For the purposes of this Division, references to a relevant debenture shall include relevant debentures or units of relevant debenture issued by a trustee of a trust on behalf of the trust.

(5) The Authority may, by notice in writing —

- (a) impose such conditions or restrictions on a prescribed entity as it thinks fit; and
- (b) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity shall comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

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

(6) For the purposes of this Division, a person makes an offer of any ~~securities~~investments if, and only if, as principal —

- (a) he makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those ~~securities~~investments by him or another person with whom he has made arrangements for that issue or sale; or
- (b) he invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those ~~securities~~investments by him or another person with whom he has made arrangements for that issue or sale.

(7) In subsection (6), “sale” includes any disposal for valuable consideration.

(8) This Division applies only in relation to offers of securities made on or after the commencement of this Division.

Authority may disapply this Division to certain offers

239A.—(1) Notwithstanding any provision to the contrary in this Division, where —

- (a) an offer of ~~securities~~investments is one to which (but for this section) both this Division and Division 2 apply; and
- (b) the Authority has by order published in the *Gazette* declared that this Division shall not apply to that offer or a class of offers to which that offer belongs,

then this Division shall not apply to that offer.

(2) This Division does not apply to an offer of units or derivatives of units in a business trust, where —

- (a) the business trust is also a collective investment scheme that has been authorised under section 286 or recognised under section 287; or
- (b) the business trust is also a collective investment scheme and the offer is made in reliance on an exemption under Subdivision (4) of Division 2.

Modification of provisions to certain offers

239B. The Authority may, if it thinks it necessary in the interest of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of ~~securities~~investments as may be prescribed, and the provisions of this Division shall apply to such offer subject to such modifications or adaptations.

Subdivision (2) — Registration or Recognition of Business Trusts

Requirement for registration or recognition

239AA—(1) No person shall make an offer of units or derivatives of units in a business trust unless the business trust is a registered business trust or recognised business trust.

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

Power of Authority to recognise business trusts constituted outside Singapore

239BB.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2), recognise a business trust constituted outside Singapore.

(2) The Authority may recognise a business trust under subsection (1) if and only if the Authority is satisfied that —

- (a) the laws and practices of the jurisdiction under which the business trust is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them under the Business Trusts Act (Cap. 31A) in the case of registered business trusts;
- (b) the business trust satisfies such criteria as may be prescribed by the Authority; and
- (c) the person making the offer of, or the issuer of, units or derivatives of units in the business trust, or the trustee-manager of the business trust satisfies such criteria as may be prescribed by the Authority.

(3) Without prejudice to subsection (2), in considering whether to recognise a business trust under subsection (1), the Authority may have regard to such other factors as may be prescribed.

(4) Without prejudice to subsection (2), the Authority may refuse to recognise any business trust where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to recognise a business trust under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the business trust on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer or the trustee-manager or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager of the business trust, or in relation to or in respect of the trust property of the business trust.

(6) Any person making an application under subsection (1) may, within 30 days after he is notified that the Authority has refused to recognise that business trust constituted outside Singapore under subsection (1), appeal to the Minister whose decision shall be final.

(7) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any business trust that is recognised under subsection (1).

(9) While a business trust remains a recognised business trust, a person making an offer of, or an issuer of, units or derivatives of units in the trust, or the trustee-manager of the trust shall ensure that the criteria prescribed by the Authority in accordance with subsection (2)(b) and (c) which are applicable to him continue to be satisfied.

(10) The trustee-manager of a recognised business trust shall furnish such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.

(11) Any person who contravenes subsection (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to impose conditions or restrictions

239CC.—(1) The Authority may recognise a business trust under section 239BB(1) subject to such conditions or restrictions as it thinks fit to impose for the purpose of protection of investors, and the trustee-manager of the trust and a person making an offer of, or an issuer of, units or derivatives of units in the trust shall comply with the conditions or restrictions applicable to him.

(2) The Authority may, at any time, by notice in writing to any of the persons referred to in subsection (1), vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

(3) Any person who contravenes any condition or restriction applicable to him under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine

not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Revocation, suspension or withdrawal of recognition

239DD.—(1) The Authority may revoke the recognition of a recognised business trust granted under section 239BB(1) if —

- (a) the application for recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the recognition;
- (b) the Authority is of the opinion that the continued recognition of the business trust is or will be against the public interest;
- (c) the Authority is of the opinion that the continued recognition of the business trust is or will be prejudicial to its unitholders or potential unitholders; or
- (d) there has been a contravention of section 239BB(9) or (10) or a condition or restriction referred to in section 239CC.

(2) Where the Authority revokes the recognition of a recognised business trust under subsection (1), the Authority may issue such directions as it deems fit to a person making an offer of, or the issuer of, units or derivatives of units in the trust, or the trustee-manager of the trust, including a direction that he provides the holders of the units or derivatives of units with an option to redeem or sell back to him their units or derivatives of units, as the case may be, on such terms as the Authority may approve; and the person to whom the directions are issued shall comply with them.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider —

- (a) whether the trustee-manager is able to liquidate the property of the trust without material adverse financial effect to the unitholders, and for this purpose, the factors which the Authority may take into account include —
 - (i) the liquidity of the property of the trust;
 - (ii) the penalties, if any, payable for liquidating the property; and
 - (iii) in a case where the units of the trust are also listed for quotation or quoted on an overseas exchange, the potential impact which the liquidation may have on unitholders in the country or territory where they are listed; and
- (b) where the units or derivatives of units of the trust are listed for quotation on the official list of an approved exchange, whether the holders of the units or

derivatives of units are afforded an opportunity to liquidate, sell or redeem their units or derivatives of units on reasonable terms in accordance with the requirements of the listing rules of the approved exchange.

(4) A person who without reasonable excuse contravenes any of the directions issued by the Authority to him under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(5) Notwithstanding subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the recognition of a recognised business trust, suspend the recognition of that recognised business trust for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the recognition of a recognised business trust under subsection (1) or suspends the recognition of a recognised business trust under subsection (5), it shall notify the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239BB(1).

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the trustee-manager of the business trust or the person who made the application to the Authority for recognition of a business trust under section 239BB(1), in such form and manner as may be prescribed, withdraw the recognition of that recognised business trust.

(8) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (7) where the Authority is of the opinion that —

(a) there is any matter concerning the recognised business trust which should be investigated before the recognition is withdrawn; or

(b) the withdrawal of the recognition would not be in the public interest.

(9) The Authority shall not —

(a) revoke the recognition of a recognised business trust under subsection (1);

(b) impose a direction under subsection (2);

(c) suspend the recognition of a recognised business trust under subsection (5); or

(d) refuse the withdrawal of the recognition of a recognised business trust under subsection (8),

without giving the person referred to in subsection (2), (6) or (7), as the case may be, an opportunity to be heard, except that an opportunity to be heard need not be given for a revocation or suspension on the ground that the continued recognition of the

recognised business trust is against the public interest on the basis of any of the following circumstances:

- (i) the person making the offer (being an entity), the issuer, the trustee-manager of the recognised business trust or the recognised business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (ii) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager, or in relation to the trust property of the recognised business trust.

(10) The person referred to in subsection (2), (6) or (7), as the case may be, may, within 30 days after he is notified that the Authority —

- (a) has revoked the recognition of that recognised business trust under subsection (1);
- (b) has imposed a direction on him under subsection (2);
- (c) has suspended the recognition of that recognised business trust under subsection (5); or
- (d) has refused to withdraw the recognition of that recognised business trust under subsection (8),

appeal to the Minister whose decision shall be final.

(11) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (5) or withdraws a recognition under subsection (8), it may —

- (a) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and
- (b) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.

Subdivision (23) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

240.—(1) No person shall make an offer of investments~~securities~~ unless the offer —

- (a) is made in or accompanied by a prospectus in respect of the offer —
 - (i) that is prepared in accordance with section 243;
 - (ii) a copy of which, being one that has been signed in accordance with subsection (4A), is lodged with the Authority; and
 - (iii) that is registered by the Authority; and
- (b) complies with such requirements as may be prescribed by the Authority.

(2) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

(3) A preliminary document referred to in subsection (2) must contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

(4) Notwithstanding subsection (1), an offer of ~~investments~~securities may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this section as a profile statement), instead of a prospectus, if —

- (a) a prospectus in respect of such offer is prepared in accordance with section 243, and the profile statement is prepared in accordance with section 246;
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (4A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer complies with such requirements as may be prescribed by the Authority.

(4A) The copy of a prospectus or profile statement lodged with the Authority shall be signed —

- (a) where the person making the offer is the issuer —
 - (i) in a case where the issuer is not the government of a State, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or
 - (ii) in a case where the issuer is the government of a State, by an official of that government who is authorised to sign the prospectus on its behalf;
- (b) where the person making the offer is an individual and is not the issuer —
 - (i) in a case where the issuer is not the government of a State —
 - (A) by that person; and

- (B) if the issuer is controlled by that person, one or more of his related parties, or that person and one or more of his related parties, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or
- (ii) in a case where the issuer is the government of a State, by that person;
- (c) where the person making the offer is an entity (not being the government of a State) and is not the issuer —
 - (i) in a case where the issuer is not the government of a State —
 - (A) by every director or equivalent person of that entity; and
 - (B) if the issuer is controlled by that entity, one or more of its related parties, or that entity and one or more of its related parties, by every director or equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or
 - (ii) in a case where the issuer is the government of a State, by every director or equivalent person of that entity; and
- (d) where the person making the offer is the government of a State and is not the issuer —
 - (i) in a case where the issuer is not the government of another State —
 - (A) by an official of the government of the State who is authorised to sign the prospectus on its behalf; and
 - (B) if the issuer is controlled by that government, one or more of its related parties, or that government and one or more of its related parties, by every director or every equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or
 - (ii) in a case where the issuer is the government of another State, by an official of the government of the first-mentioned State who is authorised to sign the prospectus on its behalf.

(4B) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

- (a) by that director or equivalent person; or
- (b) by a person who is authorised in writing by that director or equivalent person to sign on his behalf.

(4C) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

- (a) by that proposed director or equivalent person; or

(b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his behalf.

(5) No person shall make any offer of investment securities ~~in respect~~ of an entity that has not been formed or does not exist.

(6) [*Deleted Act 1/2005*]

(7) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(8) The Authority may register a prospectus or a profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless —

(a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (15);

(b) the Authority gives to the person making the offer a notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (15);

(c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (15); or

(d) the person making the offer gives a notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

(8A) Where, after a notice of an opportunity to be heard has been given under subsection (8)(a), (b)(ii) or (c)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date shall not be earlier than such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.

(8B) For the purposes of subsections (8) and (8A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

(9) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (4A) and which contains the information required to be stipulated in the prospectus under section 243, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.

(9A) A person making an offer of ~~investments~~securities may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

(10) Subject to subsection (11) —

- (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged; and
- (b) where any amendment to a profile statement is lodged, the profile statement shall be deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged.

(11) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended shall be deemed, for the purposes of subsection (8), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(11A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

(12) The Authority may, for public information, publish —

- (a) a prospectus or profile statement lodged with the Authority under this section; and
- (b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1),

and, for the purposes of this subsection, the person making the offer shall provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

(13) The Authority shall refuse to register a prospectus if —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included in it under section 243;
- (c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (4A);
- (d) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;

- (e) any written consent of an expert to the issue of the prospectus required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (ea) any written consent of an issue manager to the issue of the prospectus required under section 249A(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (eb) any written consent of an underwriter to the issue of the prospectus required under section 249A(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or
 - (f) the Authority is of the opinion that it is not in the public interest to do so.
- (14) The Authority shall refuse to register a profile statement if —
- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
 - (b) there is an omission from the profile statement of information required by section 246 to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;
 - (c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (4A);
 - (ca) any written consent of an expert to the issue of the profile statement required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (cb) any written consent of an issue manager to the issue of the profile statement required under section 249A(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (cc) any written consent of an underwriter to the issue of the profile statement required under section 249A(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (d) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
 - (e) the prospectus has not been registered by the Authority; or
 - (f) the Authority is of the opinion that it is not in the public interest to do so.
- (15) The Authority shall not refuse to register a prospectus under subsection (13) or a profile statement under subsection (14) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:
- (a) the person making the offer (being an entity), the issuer or, where applicable, the underlying entity is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or, where applicable, the underlying entity.

(16) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (13) or (14), appeal to the Minister, whose decision shall be final.

(17) If —

(a) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or

(b) an application to subscribe for or purchase investmentssecurities is accepted, or investmentssecurities are allotted, issued or sold, before a prospectus and, where applicable, profile statement in respect of the investmentssecurities has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

(i) the issue, circulation or distribution of the prospectus or profile statement;

(ii) the acceptance of the application to subscribe for or purchase the investmentssecurities; or

(iii) the allotment, issue or sale of the investmentssecurities,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(18) This section is subject to section 240A.

(19) For the purposes of subsections (13)(a) and (14)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

(20) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$50,000.

240AA.—(1) No person shall make an offer of any relevant investments, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

(a) that complies with such requirements as may be prescribed by the Authority by regulations made under section 341; and

(b) a copy of which is lodged with the Authority.

(2) No person shall publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of any relevant investments, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 240, if the document resembles or may otherwise be confused with a product highlights sheet, unless he is required to do so —

(a) under any written law or rule of law, or by any court, in Singapore;

(b) under the laws and practices of, or by any court in, any foreign jurisdiction; or

(c) by any listing rules or other requirements of any approved exchange or overseas exchange.

(3) The Authority may, for public information, publish —

(a) a product highlights sheet lodged with the Authority under this section; and

(b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) In this section —

“asset-backed securities” has the same meaning as in section 262(3);

“relevant investments” means —

(a) asset-backed securities;

(b) structured notes; or

(c) such other investments as the Authority may prescribe by regulations made under section 341;

“single purpose vehicle” means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

(a) act as counterparty to arrangements which involve the use of derivatives to create exposure to assets from which payments to holders of any structured notes are or will be primarily derived;

(b) issue any structured notes;

“specified financial institution” means —

(a) any bank licensed under the Banking Act (Cap. 19); or

(b) any entity that is, or that belongs to a class of entities that is, specified by the Authority, by notification published in the *Gazette*, to be an entity, or a class of entities, for the purposes of this paragraph;

“structured notes” means any type of debentures or units of debentures —

(a) which is issued —

(i) in relation to —

(A) a synthetic securitisation transaction; or

(B) such other arrangement or transaction as may be prescribed by the Authority by regulations made under section 341; or

(ii) by a specified financial institution; and

(b) for which —

(i) the principal sum or any interest is, or both are, payable;

(ii) such other sum or sums as may be prescribed by the Authority, by regulations made under section 341, is or are payable;

(iii) one or more underlying assets, being investments, equity interests, commodities, currencies or such other assets as may be prescribed by the Authority by regulations made under section 341, are to be physically delivered; or

(iv) 2 or more of sub-paragraphs (i), (ii) and (iii) apply,

in accordance with a formula based on one or more of the following:

(A) the performance of any type of investments, equity interest, commodity or index, or of a basket of 2 or more types of investments, equity interests, commodities or indices;

(B) the credit risk or performance of any entity or a basket of entities;

(C) the movement of interest rates or currency exchange rates; or

(D) such other variables as may be prescribed by the Authority by regulations made under section 341;

“synthetic securitisation transaction” means an arrangement involving the use of derivatives to create or replicate exposure to assets that are not transferred to, or are not a part of an asset pool held by, a single purpose vehicle.

240AB.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from all or any of the requirements in section 240AA, subject to such conditions or restrictions as may be determined by the Authority.

(2) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any person from all or any of the requirements in section 240AA,

subject to such conditions or restrictions as the Authority may specify by notice in writing.

(3) The Authority may at any time add to, vary or revoke any condition or restriction imposed under subsection (1) or (2).

(4) Any person who contravenes any condition or restriction imposed under subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Debenture issuance programme

240A.—(1) A prospectus for every offer of relevant debentures or units of relevant debentures that is part of a debenture issuance programme shall comprise —

(a) a base prospectus applicable to every offer under the debenture issuance programme; and

(b) a pricing statement applicable to that particular offer.

(2) A profile statement for every offer of relevant debentures or units of relevant debentures that is part of a debenture issuance programme shall comprise —

(a) an extract from, or an abridged version of, a base prospectus referred to in subsection (1)(a) (referred to in this section as a base profile statement); and

(b) a pricing statement applicable to that particular offer.

(3) In respect of an offer referred to in subsection (1), the requirements of section 240(1)(a)(ii) and (iii) are satisfied if a copy of the base prospectus and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

(4) In respect of an offer referred to in subsection (2), the requirements of section 240(4)(b) and (c) are satisfied if a copy of the base profile statement and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

(5) For the avoidance of doubt, where the base prospectus or base profile statement in relation to a debenture issuance programme has been lodged with and registered by the Authority, it shall be treated as having been lodged with and registered by the Authority in respect of every offer under that programme.

(6) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (1), a reference to a prospectus shall, unless the context otherwise requires or the Authority has prescribed otherwise, be read as a reference to both the base prospectus and the pricing statement.

(7) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (2), a reference to a profile statement shall, unless the

context otherwise requires or the Authority has prescribed otherwise, be read as a reference to both the base profile statement and the pricing statement.

(8) The Authority may, by regulations, prescribe how the provisions of this Subdivision shall apply to an offer referred to in subsection (1) or (2).

(9) For the avoidance of doubt, a pricing statement may be registered by the Authority at any time after its lodgment with the Authority.

Lodging supplementary document or replacement document

241.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of ~~securities~~investments, the person making that offer becomes aware of —

- (a) a false or misleading statement in the prospectus or profile statement;
- (b) an omission from the prospectus of any information that should have been included in it under section 243, or an omission from the profile statement of any information that should have been included in it under section 246, as the case may be; or
- (c) a new circumstance that —
 - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
 - (ii) would have been required by —
 - (A) section 243 to be included in the prospectus; or
 - (B) section 246 to be included in the profile statement,if it had arisen before the prospectus or the profile statement, as the case may be, was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

(1A) If, after a base prospectus or a base profile statement referred to in section 240A is registered but before the expiration of 24 months from the registration of the base prospectus by the Authority, the person making that offer intends to update any information or include any new information in the base prospectus or base profile statement, the person may lodge a supplementary or replacement document with the Authority, provided that no offer to which the base prospectus or base profile statement relates is subsisting at the time of the lodgment.

(1B) Subsections (7) to (16) shall not apply to a supplementary or replacement document which is lodged under subsection (1A).

(1C) For the purposes of subsection (1A), an offer shall not be treated as subsisting if —

- (a) a pricing statement in respect of the offer of relevant debentures or units of relevant debentures has not been registered by the Authority under section 240A; or
 - (b) a pricing statement in respect of the offer of relevant debentures or units of relevant debentures has been registered by the Authority under section 240A, and —
 - (i) the offer has closed with no application to subscribe for or purchase the relevant debentures or units of relevant debentures having been received or accepted; or
 - (ii) one or more applications to subscribe for or purchase the relevant debentures or units of relevant debentures have been received or accepted, and —
 - (A) in a case where the relevant debentures or units of relevant debentures are or will be listed for quotation on an approved securities exchange, trading in them has commenced; or
 - (B) in any other case, all of those relevant debentures or units of relevant debentures have been issued or sold.
- (2) At the beginning of a supplementary document, there shall be —
- (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
 - (b) an identification of the prospectus or profile statement it supplements;
 - (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and
 - (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.
- (3) At the beginning of a replacement document, there shall be —
- (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
 - (b) an identification of the prospectus or profile statement it replaces.
- (4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.
- (5) The person making the offer shall take reasonable steps —
- (a) to inform potential investors of the lodgment of any supplementary or replacement document under subsection (1) or (1A); and
 - (b) to make available to them the supplementary document or replacement document.

(6) For the purposes of the application of this Division to events that occur after the lodgment of the supplementary document —

- (a) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and
- (b) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

(6A) [*Deleted by Act 1/2005*]

(6B) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

- (a) where the replacement document is a replacement prospectus, the prospectus in relation to the offer shall be taken to be the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement in relation to the offer shall be taken to be the replacement profile statement.

(7) If a supplementary document or replacement document is lodged with the Authority, the offer shall be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

(8) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for ~~securities~~investments, then —

(a) where the ~~investments~~securities have not been issued to the applicants, the person making the offer —

(i) shall —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the

supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or

(iii) shall —

(A) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or

(b) where the investments~~securities~~ have been issued to the applicants, the person making the offer —

(i) shall —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those investments~~securities~~ which they do not wish to retain title in; or

(iii) shall —

(A) treat the issue of the investments~~securities~~ as void, in which case the issue shall be deemed void; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the investments~~securities~~.

(9) Subsections (8)(b) and (11) have effect notwithstanding sections 76 and 76A, and Division 3A of Part IV, of the Companies Act (Cap. 50).

(10) An applicant who wishes to exercise his option under subsection (8)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days from the receipt of such notification, pay to the applicant all moneys paid by the applicant on account of his application for the investmentssecurities.

(11) An applicant who wishes to exercise his option under subsection (8)(b)(i) or (ii) to return investmentssecurities issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to be evidence of title to those investmentssecurities to that person, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by the applicant for the investmentssecurities, and the issue of those investmentssecurities shall be deemed to be void.

(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase investmentssecurities, then —

(a) where the investmentssecurities have not been transferred to the applicants, the person making the offer —

(i) shall —

- (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; and
- (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or

(iii) shall —

- (A) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or

(b) where the investmentssecurities have been transferred to the applicants, the person making the offer —

(i) shall —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those investmentssecurities which they do not wish to retain title in; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those investmentssecurities which they do not wish to retain title in; or

(iii) shall treat the sale of the investmentssecurities as void, in which case the sale shall be deemed void, and shall —

(A) if documents purporting to evidence title to the investmentssecurities (referred to in this paragraph as the title documents) have been issued to the applicants —

(AA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return the title documents to the person making the offer within 14 days from the date of lodgment of the supplementary document or replacement document; and

(AB) within 7 days from the date of receipt of the title documents or the date of lodgment of the supplementary document or replacement document, whichever is the later, pay to the applicants all moneys paid by them for the investmentssecurities; or

(B) if no title documents have been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the investmentssecurities.

(13) An applicant who wishes to exercise his option under subsection (12)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days of the receipt of such notification, pay to the applicant all moneys paid by him on account of his application for the investmentssecurities.

(14) An applicant who wishes to exercise his option under subsection (12)(b)(i) or (ii) to return securities sold to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to evidence title to those investmentssecurities to the person making the offer, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by him for the investmentssecurities and the sale of the investmentssecurities shall be deemed to be void.

(15) Any person who contravenes subsection (8) or (12) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

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

(17) For the purposes of subsection (1)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

Stop order for prospectus and profile statement

242.—(1) If a prospectus has been registered and —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included in it under section 243;
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by an order in writing (referred to in this section as a stop order) served on the person making the offer of investmentssecurities to which the

prospectus relates direct that no or no further investmentssecurities be allotted, issued or sold.

(2) If a profile statement has been registered and —

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
- (b) there is an omission from the profile statement of any information that is required to be included in it under section 246;
- (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by an order in writing (referred to in this section as a stop order) served on the person making the offer of investmentssecurities to which the profile statement relates direct that no or no further investmentssecurities be allotted, issued or sold.

(3) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the investmentssecurities to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on an approvedsecurities exchange and trading in them has commenced.

(4) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer, the trustee-manager of the business trust or the business trust itself or, where applicable, the underlying entity is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (aa) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of:
 - (i) any property of the person making the offer (being an entity), the issuer or, where applicable, the underlying entity;
 - (ii) any property of the trustee-manager of the business trust; or
 - (iii) the trust property of the business trust.

(5) Where applications to subscribe for securities—investments to which the prospectus or profile statement relates have been made prior to the stop order, then —

- (a) where the investmentssecurities have not been issued to the applicants —
 - (i) the applications shall be deemed to have been withdrawn and cancelled; and

(ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the investmentssecurities; or

(b) where the investmentssecurities have been issued to the applicants —

(i) the issue of the investmentssecurities shall be deemed to be void; and

(ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the investmentssecurities.

(6) Subsection (5)(b) has effect notwithstanding sections 76 and 76A, and Division 3A of Part IV, of the Companies Act (Cap. 50).

(7) Where applications to purchase investmentssecurities to which the prospectus or profile statement relates have been made prior to the stop order, then —

(a) where the investmentssecurities have not been transferred to the applicants —

(i) the applications shall be deemed to have been withdrawn and cancelled; and

(ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the investmentssecurities; or

(b) where the investmentssecurities have been transferred to the applicants, the sale shall be deemed to be void, and the person making the offer shall —

(i) if documents purporting to evidence title to the investmentssecurities have been issued to the applicants —

(A) within 7 days from the date of the stop order, inform the applicants to return such documents to the person making the offer within 14 days from that date; and

(B) within 7 days from the date of the receipt of those documents or the date of the stop order, whichever is the later, pay to the applicants all moneys paid by them for the investmentssecurities; or

(ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the investmentssecurities.

(8) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person making the offer directing that no or no further investmentssecurities to which the prospectus or profile statement relates be allotted, issued or sold.

(9) An interim stop order shall, unless revoked by the Authority, be in force —

(a) in a case where —

(i) it is served during a hearing under subsection (4); or

(ii) a hearing under subsection (4) is commenced while it is in force,

until the Authority makes an order under subsection (1) or (2); and

(b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(10) Subsections (5) and (7) shall not apply where only an interim stop order has been served.

(11) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(12) Any person who contravenes subsection (5) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(13) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

Contents of prospectus

243.—(1) A prospectus for an offer of investments~~securities~~ shall contain —

(a) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and

(b) the matters prescribed by the Authority.

(2) The prospectus shall, with respect to subsection (1)(a), contain such information —

(a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and

(b) only to the extent that a person whose knowledge is relevant —

(i) actually knows the information; or

(ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

(3) The matters referred to in subsection (1)(a) shall relate to —

(a) the rights and liabilities attaching to the investments~~securities~~;

- (b) in the case of an offer of investments other than units or derivatives of units in a business trust, the assets and liabilities, profits and losses, financial position and performance, and prospects of the issuer;
- (c) if the underlying entity is controlled by —
- (i) the person making the offer;
 - (ii) one or more of the related parties of the person making the offer; or
 - (iii) the person making the offer and one or more of his related parties,
- the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; ~~and~~
- (d) in the case of an offer of units of shares or relevant debentures, where the person making the offer, or an entity which is controlled by —
- (i) the person making the offer;
 - (ii) one or more of the related parties of the person making the offer; or
 - (iii) the person making the offer and one or more of his related parties,
- is or will be required to issue or deliver the relevant securities, or to meet financial or contractual obligations to the holders of those units, the capacity of that person or entity to issue or deliver the relevant securities, or the ability of that person or entity to meet those financial or contractual obligations;
- (e) in the case of an offer of units or derivatives of units in a business trust, where the person making the offer is the trustee-manager of the business trust or the trustee-manager of the business trust is controlled by —
- (i) the person making the offer;
 - (ii) one or more of the related parties of the person making the offer; or
 - (iii) the person making the offer and one or more of his related parties,
- the assets and liabilities, profits and losses, financial position and performance of the business trust and of the trustee-manager, and the prospects of the business trust;
- (f) in the case of an offer of derivatives of units in a business trust where the derivatives of units are issued by an entity other than the trustee-manager of the business trust, and the person making the offer is that entity or that entity is controlled by —
- (i) the person making the offer;
 - (ii) one or more of the related parties of the person making the offer; or
 - (iii) the person making the offer and one or more of his related parties,
- the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; and
- (g) in the case of an offer of derivatives of units in the business trust, where the person making the offer, or an entity which is controlled by —

- (i) the person making the offer;
- (ii) one or more of the related parties of the person making the offer; or
- (iii) the person making the offer and one or more of his related parties,

is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units, the capacity of that person or entity to issue or deliver the relevant units or derivatives of units in that business trust, or the ability of that person or entity to meet those financial or contractual obligations;

(4) In deciding what information shall be included under subsection (1)(a), regard shall be had to —

- (a) the nature of the ~~securities~~-investments and the nature of the entity concerned;
- (b) the matters that likely investors may reasonably be expected to know; and
- (c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.

(4A) Subject to any conditions or restrictions as may be prescribed by the Authority, the information referred to in subsection (1) may be incorporated in the prospectus by reference to a document (referred to in this subsection as a reference document) lodged with the Authority together with the prospectus. For the purposes of this Division, the information contained in the reference document shall be regarded as part of the prospectus.

(5) For the purposes of subsection (2)(b), a person's knowledge is relevant only if he is one of the following persons:

- (a) the person making the offer;
- (b) if the person making the offer is an entity, a director or an equivalent person of the entity;
- (c) the issuer;
- (d) a director or an equivalent person, or a proposed director or an equivalent person, of the issuer;
- (da) a person named in the prospectus with his consent as an underwriter to the issue or sale;
- (e) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;
- (f) a person named in the prospectus with his consent as having made a statement —
 - (i) that is included in the prospectus; or
 - (ii) on which a statement made in the prospectus is based;
- (g) a person named in the prospectus with his consent as having performed a particular professional or advisory function.

(6) A condition requiring or binding an applicant for securities investments to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(7) This section does not affect any liability that a person has under any other law.

(8) In subsection (3)(e), “assets and liabilities, profits and losses, financial position and performance, and prospects”, in relation to a business trust, means —

(a) the assets and liabilities, profits and losses, financial position and performance of that business trust derived from the accounting records and other records kept by the trustee-manager of that business trust; and

(b) the business and financial prospects anticipated with respect to the operations of the trustee-manager of the business trust in its capacity as trustee-manager of the business trust.

244. *[Repealed by Act 16/2003]*

Retention of over-subscriptions and statement of asset-backing in relevant debenture issues

245.—(1) An entity shall not accept or retain subscriptions to a relevant debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the entity has specified in the prospectus —

(a) that it expressly reserves the right to accept or retain over- subscriptions; and

(b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

(2) Subject to regulations made by the Authority for the purposes of this subsection, where an entity specifies in a prospectus relating to a relevant debenture issue that it reserves the right to accept or retain over-subscriptions —

(a) the entity shall not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the entity and of its guarantor entities; and

(b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the entity would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

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

Contents of profile statement

246.—(1) A profile statement for an offer of securities investments shall contain —

(a) the following particulars:

(i) identification of the person making the offer and, where the person making the offer is not the issuer, the issuer, the business trust and the trustee-manager of the business trust and, where applicable, the underlying entity;

(ii) identification of the persons signing the profile statement;

(iii) the nature of the investmentssecurities;

(iv) the nature of the risks involved in investing in the investmentssecurities;

(v) details of all amounts payable in respect of the investmentssecurities (including any amount by way of fee, commission or charge);

(b) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and

(c) a statement that the persons referred to in section 240(4A) who have signed the profile statement are satisfied that the profile statement contains a fair summary of the key information in the prospectus.

(2) A profile statement shall not contain —

(a) any statement that is false or misleading in the form and context in which it is included;

(b) any material information that is not contained in the prospectus; and

(c) any material information that differs in any material particular from that set out in the prospectus.

(3) For the purposes of subsection (2)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

Exemption from requirements as to form or content of prospectus or profile statement

247.—(1) The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.

(2) The Authority shall not grant an exemption under subsection (1) unless it is of the opinion that —

(a) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or

(b) it would not be prejudicial to the public interest if the requirement in respect of which exemption has been applied for were dispensed with.

(3) The Authority may exempt any class of persons, or any class or description of prospectuses or profile statements, from any requirement of this Act relating to the

form or content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.

(4) [*Deleted by Act 16/2003*]

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

Exemption for certain governmental and international entities as regards signing of copy of prospectus or profile statement by all directors or equivalent persons

248.—(1) This section shall apply only to entities that are both of a governmental and international character.

(2) An entity to which this section applies may apply in writing to the Authority for an exemption from the requirements of section 240(1)(a)(ii), (4)(b), (4A), (13)(c) and (14)(c) and the Authority may, if it considers those requirements unduly burdensome on the entity, exempt such entity from complying therewith.

(3) The Authority may subject such exemption to a requirement that such minimum number of directors or equivalent persons who are resident in Singapore as the Authority may, in that case, decide must sign the copy of the prospectus or profile statement.

(4) In the event that no director or equivalent person is resident in Singapore, the Authority may permit a duly authorised agent to sign the prospectus or profile statement so long as such authorisation is supported by a resolution of the board of the entity.

(5) The Authority may, if satisfied that a particular entity cannot comply with any of the requirements in subsection (3) or (4), grant the exemption applied for.

(6) Any prospectus or profile statement that complies with the terms of exemption granted by the Authority shall be deemed to be a prospectus or profile statement for the purposes of this Division and a copy of such prospectus or profile statement shall be registered by the Authority.

[*Companies, s. 51*]

Expert's consent to issue of prospectus or profile statement containing statement by him

249.—(1) Where an offer of investments~~securities~~ is made in or accompanied by a prospectus or profile statement which includes a statement purporting to be made by, or based on a statement made by, an expert, the prospectus or profile statement shall not be issued unless —

(a) the expert has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

(b) there appears in the prospectus or profile statement, as the case may be, a statement that the expert has given and has not withdrawn his consent.

(1A) Every person making the offer shall cause a true copy of every written consent referred to in subsection (1) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if the issuer has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(1B) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the investmentssecurities to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (1A) for a period of at least 6 months after the registration of the prospectus or profile statement.

(2) If any prospectus or profile statement is issued in contravention of subsection (1), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(3) The Authority may exempt any person or class of persons, or any prospectus or profile statement or class or description of prospectuses or profile statements, from this section, subject to such conditions or restrictions as may be determined by the Authority.

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

Consent of issue manager and underwriter to being named in prospectus or profile statement

249A.—(1) Where an offer of investmentssecurities is made in or accompanied by a prospectus or profile statement in which a person is named as the issue manager to the offer, the prospectus or profile statement shall not be issued unless —

(a) the person has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to being named in the prospectus or profile statement as issue manager to that offer; and

(b) there appears in the prospectus or profile statement, as the case may be, a statement that the person has given and has not withdrawn his consent.

(2) Where an offer of investmentssecurities is made in or accompanied by a prospectus or profile statement in which a person is named as the underwriter (but not a sub-underwriter) to the offer, the prospectus or profile statement shall not be issued unless —

(a) the person has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to being named in the prospectus or profile statement as underwriter to that offer; and

(b) there appears in the prospectus or profile statement, as the case may be, a statement that the person has given and has not withdrawn such consent.

(3) If any prospectus or profile statement is issued in contravention of subsection (1) or (2), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(4) Every person making the offer shall cause a true copy of every written consent referred to in subsections (1) and (2) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(5) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (4) for a period of at least 6 months after the registration of the prospectus or profile statement.

Duration of validity of prospectus and profile statement

250.—(1) No person shall make an offer of investmentssecurities, or allot, issue or sell any investmentssecurities, on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

(2) In a case where an entity makes an offer of investmentssecurities or where the investmentssecurities being offered are those issued by an entity or a proposed entity, no officer or equivalent person or promoter of the entity or proposed entity shall authorise or permit —

(a) the offer of those investmentssecurities; or

(b) the allotment, issue or sale of those investmentssecurities,

on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

(3) The period under subsection (1) or (2) is —

(a) in a case where the investmentssecurities are relevant debentures or units of relevant debentures issued under a debenture issuance programme under section 240A, 24 months from the date of registration by the Authority of the base prospectus in relation to such offer, allotment, issue or sale; or

(b) in any other case, 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

(4) If default is made in complying with subsection (1) or (2), the person and, in the case of an entity or a proposed entity, every officer or equivalent person or promoter of the entity or proposed entity shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) An allotment, an issue or a sale of investmentssecurities that is made in contravention of subsection (1) or (2) shall not, by reason only of that fact, be voidable or void.

Restrictions on advertisements, etc.

251.—(1) If a prospectus is required for an offer or intended offer of investmentssecurities, a person shall not —

(a) advertise the offer or intended offer; or

(b) publish a statement that —

(i) directly or indirectly refers to the offer or intended offer; or

(ii) is reasonably likely to induce persons to subscribe for or purchase the investmentssecurities,

unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —

(a) indirectly refers to an offer or intended offer of investmentssecurities; or

(b) is reasonably likely to induce persons to subscribe for or purchase investmentssecurities,

regard shall be had to whether the statement —

(i) forms part of the normal advertising —

(A) of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; or

(B) by a trustee-manager of a business trust on behalf of the business trust in respect of the products or services offered by the trustee-manager on behalf of the business trust, and is genuinely directed at maintaining existing customers, or attracting new customers, for those products or services;

(ii) communicates information that materially deals with the affairs of the entity or the business trust; and

(iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(3) Notwithstanding subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made without contravening subsection (1), if —

(a) the front page of the preliminary document contains —

(i) the following statement:

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.”;

(ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and

(iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the preliminary document to purchase or subscribe for any ~~securities~~investments to which the preliminary document relates;

(b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the ~~investments~~securities to which the preliminary document relates, or the acceptance of such an offer by any person; and

(c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

~~(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting oral or written material, on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made before a prospectus or profile statement is registered by the Authority.~~

~~(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 240 without contravening subsection (1).~~

(4) Notwithstanding subsection (6), a person does not contravene subsection (1) —

(a) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made; or

(b) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of investments, before the prospectus or profile statement is registered by the Authority, for the sole purpose of

equipping any of the following persons with knowledge of the investments in order to enable the person to carry on the regulated activity of dealing in capital market products in respect of investments, or to provide any financial advisory service, in relation to the investments:

(i) a person licensed under this Act in respect of dealing in capital market products in respect of investments;

(ii) an exempt person;

(iii) a person who is a representative in respect of dealing in capital market products in respect of investments under this Act;

(iv) a representative of an exempt person;

(v) a person licensed under the Financial Advisers Act (Cap. 110) in respect of advising on any investment product;

(vi) an exempt financial adviser;

(vii) a person who is a representative in respect of advising on any investment product under the Financial Advisers Act; or

(viii) a representative of an exempt financial adviser.

(5) For the avoidance of doubt, a person may disseminate the following without contravening subsection (1):

(a) a prospectus or profile statement that has been registered by the Authority under section 240; or

(b) a product highlights sheet in respect of which section 240AA(1)(a) and (b) has been complied with and which is disseminated with a prospectus or profile statement that has been registered by the Authority under section 240.

(6) Before a prospectus or profile statement is registered, an advertisement or publication does not contravene subsection (1) if it contains only the following:

(a) a statement that identifies the ~~securities~~investments, the person making the offer, the issuer, the business trust and the trustee-manager of the business trust and, where applicable, the underlying entity;

(b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;

(c) a statement that anyone wishing to acquire the ~~securities~~investments will need to make an application in the manner set out in the prospectus or profile statement; and

(d) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.

(7) To satisfy subsection (6), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the statement referred to in paragraph (d).

(8) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if —

- (a) it includes a statement that the prospectus or profile statement in respect of the offer of investments securities is available for collection at the times and places specified in the statement;
- (b) it includes a statement that anyone wishing to acquire the investments securities will need to make an application in the manner set out in the prospectus or profile statement; and
- (c) it does not contain any information that is not included in the prospectus or profile statement; and
- (d) it complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(9) An advertisement or a publication does not contravene subsection (1) if it —

- (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved securities exchange, futures exchange or overseas securities exchange made by any person;
- (b) consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee-manager of the business trust, the underlying entity or any entity, the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;
- (c) consists solely of a report about the issuer, the business trust or the underlying entity that is published by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity, which —
 - (i) does not contain information that materially affects the affairs of the issuer, the business trust or underlying entity other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a disclosure, notice or report referred to in paragraph (a) or (b); and
 - (ii) does not refer (directly or indirectly) to the offer or intended offer;
- (d) consists solely of a statement made by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;
- (e) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (f)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio, television or any other means of broadcasting or communication, relating to —
 - (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;

- (ii) a disclosure, notice or report referred to in paragraph (a);
 - (iii) a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (b);
 - (iv) a report referred to in paragraph (c); or
 - (v) a product highlights sheet;
- (f) is a report about the ~~securities~~investments which are the subject of the offer or intended offer, published by someone who is not —
- (i) the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity;
 - (ii) a director or an equivalent person of the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity;
 - (iii) a person who has an interest in the success of the issue or sale of the ~~investments~~securities; or
 - (iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);
- (g) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or
- (h) is a publication made by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —
- (i) an earlier news report or a genuine comment referred to in paragraph (e); or
 - (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (10),
- provided that the first-mentioned publication does not contain any material information that is not included in the prospectus.
- (10) A person does not contravene subsection (1) if —
- (a) he publishes any advertisement or publication in the ordinary course of a business of —
 - (i) publishing a newspaper, periodical or magazine; or
 - (ii) broadcasting by radio, television, or any other means of broadcasting or communication; and
 - (b) he did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

(11) Subsection (9)(e) and (f) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(12) Any person who contravenes subsection (1) or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.
~~Any person who contravenes subsection (1) or who knowingly authorised or permitted the publication or dissemination in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

(13) This section does not affect any liability that a person has under any other law.

(14) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as may be determined by the Authority.

(15) Any person who contravenes any of the conditions or restrictions imposed under subsection (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(16) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(17) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

(18) For the purposes of subsection (2)(ii), the reference to affairs of the entity or the business trust shall —

(a) in the case where the entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and

(b) in any other case, be construed as a reference to such matters as may be prescribed by the Authority.

(18A) In subsection (4) —

“exempt financial adviser” and “financial advisory service” have the same meanings as in section 2(1) of the Financial Advisers Act;

“representative” —

(a) in relation to dealing in capital market products in respect of investments under this Act or an exempt person, has the same meaning as in section 2(1); or

(b) in relation to advising on any investment product under the Financial Advisers Act or an exempt financial adviser, has the same meaning as in section 2(1) of that Act.

(19) For the purposes of subsection (9)(c)(i), the reference to affairs of the issuer, ~~or~~ underlying entity or business trust shall —

(a) in the case where the issuer or underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and

(b) in any other case, be construed as a reference to such matters as may be prescribed by the Authority.

Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies

252.—(1) A person referred to in section 254(3) (other than paragraph (a)) shall notify in writing the person making the offer of ~~securities~~investments, as soon as practicable, if he becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer that —

(a) a statement in the prospectus or the profile statement is false or misleading;

(b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

(c) a new circumstance —

(i) has arisen since the prospectus or the profile statement was lodged with the Authority; and

(ii) would have been required to be included in the prospectus under section 243, or required to be included in the profile statement under section 246, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

and the failure to so notify would have been materially adverse from the point of view of an investor.

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

(3) For the purposes of subsection (1)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

Criminal liability for false or misleading statements

253.—(1) Where an offer of investmentssecurities is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

- (a) a false or misleading statement is contained in —
 - (i) the prospectus or the profile statement; or
 - (ii) any application form for the investmentssecurities;
- (b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or
- (c) there is an omission to state a new circumstance that —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required to be included in the prospectus under section 243, or required to be included in the profile statement under section 246, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.

(3) A person shall not be taken to have contravened subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.

- (4) The persons guilty of the offence are —
- (a) the person making the offer;
 - (b) where the person making the offer is an entity —
 - (i) each director or equivalent person of the entity; and
 - (ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;

- (c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of his related parties —
 - (i) the issuer;
 - (ii) each director or equivalent person of the issuer; and
 - (iii) each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the issuer;
- (d) an issue manager to the offer of the investment securities who is, and who has consented to be, named in the prospectus or profile statement, if —
 - (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
 - (ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or
 - (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;
- (e) an underwriter (but not a sub-underwriter) to the issue or sale of the investment securities who is, and who has consented to be, named in the prospectus or profile statement, if —
 - (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
 - (ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or
 - (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;
- (f) a person named in the prospectus or the profile statement with his consent as having made —
 - (i) the statement that is false or misleading, if he intentionally or recklessly makes that statement; or
 - (ii) a statement on which the false or misleading statement is based, if he knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw his consent,
but only in respect of the inclusion of the false or misleading statement; and
- (g) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.

(5) For the purposes of subsection (4) and this subsection —

(a) remedial action includes any of the following:

- (i) preventing the statement from being included, or having the information or circumstance included, in the prospectus or profile statement, as the case may be;
- (ii) procuring the lodgment of a supplementary or replacement prospectus under section 241; and

(b) a person is reckless as to the matter referred to in subsection (4)(d)(iii) or (e)(iii) if, having been put upon inquiry that the statement to be, or which has been, included in the prospectus or profile statement is likely to be false or misleading, that the information or circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, he fails to —

- (i) make all inquiries as are reasonable in the circumstances to verify this; and
- (ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted by the outcome of the inquiries.

(6) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

Civil liability for false or misleading statements

254.—(1) Where an offer of investments~~securities~~ is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

(a) a false or misleading statement is contained in —

- (i) the prospectus or the profile statement; or
- (ii) any application form for the investments~~securities~~;

(b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

(c) there is an omission to state a new circumstance that —

- (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
- (ii) would have been required by section 243 to be included in the prospectus, or required to be included in the profile statement under section 246, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (3) shall be liable to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission.

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

(3) The persons liable are —

(a) the person making the offer;

(b) where the person making the offer is an entity —

(i) each director or equivalent person of the entity; and

(ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;

(c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of his related parties —

(i) the issuer;

(ii) each director or equivalent person of the issuer; and

(iii) each person who is, and who has consented to be, named in the prospectus or the profile statement as a proposed director or an equivalent person of the issuer;

(d) an issue manager to the offer of the ~~investments~~ securities who is, and who has consented to be, named in the prospectus or the profile statement;

(da) an underwriter (but not a sub-underwriter) to the issue or sale of the ~~investments~~ securities who is, and who has consented to be, named in the prospectus or the profile statement;

(e) a person named in the prospectus or the profile statement with his consent as having made a statement —

(i) that is included in the prospectus or the profile statement; or

(ii) on which a statement made in the prospectus or the profile statement is based,

but only in respect of the inclusion of that statement; and

(f) any other person who made the false or misleading statement or omitted to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance.

(4) A person who acquires investmentssecurities as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the investmentssecurities in reliance on both the profile statement and the prospectus for the offer.

(4A) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

(5) No action under subsection (1) shall be commenced after the expiration of 6 years from the date on which the cause of action arose.

(6) This section does not affect any liability that a person has under any other law.

Defences

255.—(1) A person referred to in section 253(4)(a), (b) or (c) is not liable under section 253(1), and a person referred to in section 254(3) is not liable under section 254(1), only because of a false or misleading statement in a prospectus or a profile statement if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) A person referred to in section 253(4)(a), (b) or (c) is not liable under section 253(1), and a person referred to in section 254(3) is not liable under section 254(1), only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that there was no omission from the prospectus or profile statement in relation to that matter.

(3) A person is not liable under section 253(1) or 254(1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that he placed reasonable reliance on information given to him by —

- (a) if the person is an entity, someone other than —
 - (i) a director or an equivalent person; or
 - (ii) an employee or agent, of the entity; or
- (b) if the person is an individual, someone other than an employee or agent of the individual.

(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because he performs a particular professional or advisory function for the entity or individual.

(5) A person who is named in a prospectus or a profile statement as —

- (a) a proposed director or an equivalent person of the issuer, or an issue manager or underwriter;
- (b) having made a statement included in the prospectus or the profile statement; or
- (c) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 253(1) or 254(1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that he publicly withdrew his consent to being named in the prospectus or the profile statement in that way.

(6) A person is not liable under section 253(1) or 254(1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that he was not aware of the matter.

(7) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

256. [*Repealed by Act 1/2005*]

Document containing offer of investmentssecurities for sale deemed prospectus

257.—(1) Subsection (2) applies where —

- (a) an entity allots or agrees to allot to any person any investmentssecurities of ~~the entity~~ with a view to all or any of them being subsequently offered for sale to another person; and
- (b) such offer (referred to in this section as a subsequent offer) does not qualify for an exemption under Subdivision (4) of this Division (other than section 280).

(2) Any document by which the subsequent offer is made shall for all purposes be deemed to be a prospectus issued by the entity, and the entity shall for all purposes be deemed to be the person making the offer, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if —

- (a) an offer of investmentssecurities has been made; and
- (b) persons accepting the subsequent offer in respect of any investmentssecurities were subscribers therefor,

but without prejudice to the liability, if any, of the persons making the subsequent offer, in respect of statements or non-disclosures in the document or otherwise.

(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, investmentssecurities was made with a view to the investmentssecurities being subsequently offered for sale if it is shown —

(a) that an offer of the investmentssecurities or of any of them for sale was made within 6 months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the entity in respect of the investmentssecurities had not been so received.

(4) The requirements of this Division as to prospectuses shall have effect as though the persons making the subsequent offer were persons named in the prospectus as directors or equivalent persons of the entity.

(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer shall state —

(a) the net amount of the consideration received or to be received by the entity in respect of the investmentssecurities being offered; and

(b) the place and time at which a copy of the contract under which the investmentssecurities have been or are to be allotted may be inspected.

Application and moneys to be held in trust in separate bank account until allotment

258.—(1) All application and other moneys paid prior to allotment by any applicant on account of investmentssecurities offered to him shall, until the allotment of the investmentssecurities, be held by the person making the offer of the investmentssecurities upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those investmentssecurities.

(2) There shall be no obligation or duty on any bank with which any such moneys have been deposited to enquire into or see to the proper application of those moneys, so long as the bank acts in good faith.

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

Allotment of investmentssecurities where prospectus indicates application to list on approvedsecurities exchange

259.—(1) Where a prospectus states or implies that application has been or will be made for permission for the investmentssecurities offered thereby to be listed for quotation on any approvedsecurities exchange, and —

(a) the permission is not applied for in the form required by the approvedsecurities exchange within 3 days from the date of the issue of the prospectus; or

- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the approved securities exchange,

then —

- (i) any allotment whenever made of investments securities made on an application in pursuance of the prospectus shall, subject to subsection (3), be void; and
- (ii) any person who continues to allot such investments securities after the period specified in paragraph (a) or (b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer shall, subject to subsection (3), immediately repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such moneys is not repaid within 14 days after the person making the offer so becomes liable to repay them, then —

- (a) he shall be liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days; and
- (b) where the person making the offer is an entity, in addition to the liability of the entity, the directors or equivalent persons of the entity shall be jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.

(3) Where in relation to any investments securities of an entity —

- (a) permission is not applied for as specified in subsection (1)(a); or
- (b) permission is not granted as specified in subsection (1)(b),

the Authority may, on the application of the entity made before any of the investments securities is purported to be allotted, exempt the allotment of the investments securities from the provisions of this section, and the Authority shall give notice of such exemption in the *Gazette*.

(4) A director or an equivalent person shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for investments securities to waive compliance with any requirement of this section or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this section shall have effect —

(a) in relation to any investmentssecurities agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering investmentssecurities for sale as if a reference to sale were substituted for a reference to allotment.

(7) All moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).

(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(9) Where the approvedsecurities exchange has within the time specified in subsection (1)(b) granted permission subject to compliance with any requirements specified by the approvedsecurities exchange, permission shall be deemed to have been granted by the approvedsecurities exchange if the directors or equivalent persons have given to the approvedsecurities exchange an undertaking in writing to comply with the requirements of the approvedsecurities exchange.

(10) If any such undertaking referred to in subsection (9) is not complied with, each director or equivalent person who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(11) A person shall not issue a prospectus inviting persons to subscribe for investmentssecurities of an entity if it includes —

(a) a false or misleading statement that permission has been granted for those investmentssecurities to be listed for quotation on, dealt in or quoted on any approvedsecurities exchange; or

(b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation, dealing in or quoting the investmentssecurities, on any approvedsecurities exchange, or to any requirement of an approvedsecurities exchange, unless —

(i) that statement is or is to the effect that permission has been granted, or that application has been or will be made to the approvedsecurities exchange within 3 days from the date of the issue of the prospectus; or

(ii) that statement has been approved by the Authority for inclusion in the prospectus.

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a

further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(13) Where a prospectus contains a statement to the effect that the memorandum and articles or other constituent document or documents of the issuer comply, or have been drawn so as to comply, with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the investments securities to which the prospectus relates to be listed for quotation on the approved securities exchange.

Prohibition of allotment unless minimum subscription received

260.—(1) No allotment shall be made of any investments securities of a company unless —

(a) the minimum subscription has been subscribed; and

(b) the sum payable on application for the investments securities so subscribed has been received by the company or the trustee-manager of the business trust,

but if a cheque for the sum payable has been received by the company or the trustee-manager, the sum shall be deemed not to have been received by the company or the trustee-manager until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall —

(a) be calculated based on the price at which each share or relevant debenture, or each unit of share or relevant debenture, or each unit or derivative of a unit of a business trust is or will be offered; and

(b) be reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share or relevant debenture, or each unit of share or relevant debenture, or each unit or derivative of unit of a business trust offered shall not be less than 5% of the price at which the share or relevant debenture, or unit of share or relevant debenture, or unit or derivative of a unit of a business trust is or will be offered.

(4) If the conditions referred to in subsection (1)(a) and (b) have not been satisfied on the expiration of 4 months after the first issue of the prospectus, all moneys received from applicants for securities investments shall be immediately repaid to them without interest.

(5) If any money referred to in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the company or the trustee-manager of the business trust shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months; but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) An allotment made by a company or a trustee-manager of a business trust to an applicant in contravention of this section shall be voidable at the option of the applicant which option may be exercised by written notice served on:

(a) the company —

(ai) within one month after the holding of the statutory meeting of the company and not later; or

(bii) in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, or

(b) the trustee-manager of the business trust within one month after the date of the allotment and not later,

and the allotment shall be so voidable notwithstanding that the company or business trust is in the course of being wound up.

(7) Every trustee-manager which contravenes, and every director of a trustee-manager and director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable in addition to the penalty or punishment for the offence to —

(a) in the case of a director of a company, compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred thereby; and

(b) in the case of the trustee-manager and director of a trustee-manager, pay into the trust property of the business trust and compensate the allottee respectively for any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) or the allottee has sustained or incurred thereby.

(8) No proceedings for the recovery of any compensation under subsection (7) shall be commenced after the expiration of 2 years from the date of the allotment.

(9) Any condition requiring or binding any applicant for securities investments to waive compliance with any requirement of this section shall be void.

Subdivision (34) — Relevant Debentures

Preliminary provisions

261.—(1) Subject to subsection (1A), this Subdivision shall apply where an entity makes an offer of relevant debentures.

(1A) Sections 268, 269 and 270 shall not apply if the borrowing entity is a prescribed entity.

(1B) In subsections (1A) and (1C), “prescribed entity” means —

(a) any bank licensed under the Banking Act (Cap. 19); or

(b) any entity or entity of a class which has been declared by the Authority, by order published in the *Gazette*, to be a prescribed entity for the purposes of this section.

(1C) The Authority may, by notice in writing —

(a) impose such conditions or restrictions on a prescribed entity as it thinks fit; and

(b) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity shall comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

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

(2) [*Deleted by Act 1/2005*]

(3) In this Subdivision, a corporation is related to another corporation if it is deemed to be related to that other corporation by virtue of section 6 of the Companies Act (Cap. 50).

Offer of asset-backed securities

262.—(1) An offer of asset-backed securities shall be made only if they are issued by —

(a) a special purpose vehicle other than a trust; or

(b) the trustee of a trust that is a special purpose vehicle.

(2) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as may be determined by the Authority.

(3) In this section —

“asset-backed securities” means relevant debentures or units of relevant debentures issued pursuant to a securitisation transaction;

“securitisation transaction” means an arrangement that involves the sale, transfer or assignment of assets to a special purpose vehicle where —

(a) such sale, transfer or assignment is funded by the issue of relevant debentures or units of relevant debentures (whether by that special purpose vehicle or another special purpose vehicle); and

(b) payments in respect of such relevant debentures or units of relevant debentures are or will be principally derived, directly or indirectly, from the cash flows generated by the assets;

“special purpose vehicle” means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

(a) hold (whether as a legal or equitable owner) the assets from which payments to holders of any asset-backed securities are or will be primarily derived;

(b) issue any asset-backed securities.

263. [Repealed by Act 16/2003]

264. [Repealed by Act 16/2003]

Power of court in relation to certain irredeemable relevant debentures

265.—(1) Notwithstanding anything in any relevant debenture or trust deed, the security for any relevant debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the court so orders, be enforceable, immediately or at such other time as the court directs if, on the application of the trustee for the holders of the relevant debentures or (where there is no trustee) on the application of any holder of the relevant debentures, the court is satisfied that —

- (a) at the time of the issue of the relevant debentures the assets of the borrowing entity which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu* if any); and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing entity is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the relevant debentures or the relevant trust deed or under a compromise or arrangement between the borrowing entity and creditors.

265A.—(1) Where an offer of relevant debentures is made in or accompanied by a prospectus, the borrowing entity shall appoint a trustee for the holders of debentures (referred to in this section as the appointed trustee) for the entire tenure of the relevant debentures.

(2) The borrowing entity shall ensure that —

(a) where the relevant debentures are asset-backed securities or structured notes, the appointed trustee is any of the following persons:

(i) a holder of a trust business licence under the Trust Companies Act (Cap. 336) that is carrying on business in Singapore in that capacity;

(ii) a bank licensed under the Banking Act (Cap. 19) that is carrying on business in Singapore in that capacity;

(iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;

(iv) such other person as may be prescribed by the Authority by regulations made under section 341;

(b) where the relevant debentures are not asset-backed securities or structured notes, the appointed trustee is any of the following persons:

(i) a holder of a trust business licence under the Trust Companies Act that is carrying on business in Singapore in that capacity;

(ii) a bank licensed under the Banking Act that is carrying on business in Singapore in that capacity;

(iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;

(iv) any other person whom the borrowing entity is satisfied, on reasonable grounds, is, and will be, able to take timely and appropriate action on behalf of the holders of relevant debentures, in the event of a default or as required by the trust deed;

(v) such other person as may be prescribed by the Authority by regulations made under section 341;

(c) the appointed trustee is independent of the borrowing entity, guarantor entity, arranger and counterparty of the relevant debentures; and

(d) the appointed trustee meets such requirements as may be prescribed by the Authority by regulations made under section 341.

(3) For the purposes of subsection (2)(b)(iv), the borrowing entity shall, before being satisfied that a person is, and will be, able to take timely and appropriate action on behalf of the holders of relevant debentures, in the event of a default or as required by the trust deed, consider the following matters:

(a) whether the person is licensed or regulated in the jurisdiction —

(i) in which the person was incorporated or formed; or

(ii) of the person's principal place of business;

(b) the contractual arrangements between the borrowing entity and the person;

(c) whether, if the person is the appointed trustee, the duties which will be imposed on the person by way of the trust deed, or under the laws and practices of the jurisdiction referred to in paragraph (a), are at least equivalent to those imposed under section 266(1); and

(d) such other matters as may be prescribed by the Authority by regulations made under section 341.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) In this section —

“asset-backed securities” has the same meaning as in section 262(3);

“structured notes” has the same meaning as in section 240AA(5).

Duties of trustees

266.—(1) A trustee for the holders of relevant debentures shall —

- (a) at all times exercise due diligence and vigilance in carrying out its functions and duties, and in safeguarding the rights and interests of the holders of relevant debentures;
- (b) ensure that it has the ability and powers to perform all of its duties as set out in the trust deed;
- (c) ensure that any trustee appointed for the holders of any collateral upon which the relevant debentures are secured is subject to duties that are at least equivalent to those imposed under paragraphs (a) and (b); and
- (d) comply with such other requirements as may be prescribed by the Authority by regulations made under section 341, or as may be imposed by the Authority in respect of any particular offer or transaction relating to the relevant debentures.

(2) Where, after due inquiry, the trustee for the holders of relevant debentures at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Authority for an order under this subsection.

(3) The Authority, on such application —

- (a) after giving the borrowing entity an opportunity of making representations in relation to that application, by order in writing served on the entity at its registered office in Singapore, may impose such restrictions on the activities of the borrowing entity, including restrictions on advertising for deposits or loans and on borrowing by the entity as the Authority thinks necessary for the protection of the interests of the holders of the relevant debentures; or
- (b) may, and if the borrowing entity so requires, shall direct the trustee to apply to the court for an order under subsection (5); and the trustee shall apply accordingly.

(4) Where —

- (a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
- (b) the borrowing entity has contravened an order made by the Authority under subsection (2),

the trustee may, and where the borrowing entity has requested the trustee to do so, shall apply to the court for an order under subsection (5).

(5) Where an application is made to the court under subsection (3) or (4), the court may, after giving the borrowing entity an opportunity to be heard, by order, do all or any of the following things:

- (a) direct the trustee to convene a meeting of the holders of the relevant debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the court thinks fit;
- (b) stay all or any actions or proceedings before any court by or against the borrowing entity;
- (c) restrain the payment of any moneys by the borrowing entity to the holders of relevant debentures of the borrowing entity or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security, if any, for the relevant debentures;
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the relevant debentures, the members of the borrowing entity or any of its guarantor entities or the public,

but in making any such order the court shall have regard to the rights of all creditors of the borrowing entity.

(6) The court may vary or rescind any order made under subsection (5) as the court thinks fit.

(7) A trustee in making any application to the Authority or to the court shall have regard to the nature and kind of the security given when the offer of the relevant debentures was made, and if no security was given shall have regard to the position of the holders of the relevant debentures as unsecured creditors of the borrowing entity.

(8) A trustee may rely upon any certificate or report given or statement made by any advocate and solicitor, auditor or officer of the borrowing entity or guarantor entity if it has reasonable grounds for believing that such advocate and solicitor, auditor or officer was competent to give or make the certificate, report or statement.

Powers of trustee to apply to court for directions, etc.

267.—(1) A trustee for the holders of relevant debentures may apply to the court —

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or
- (b) to determine any question in relation to the interests of the holders of relevant debentures.

(2) The court may —

- (a) give such directions to the trustee as the court thinks fit; and
- (b) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the court thinks fit or make such other order on the application as the court thinks just.

(3) The court may, on an application under this section, order a meeting of all or any of the holders of relevant debentures to be called to consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as the court thinks fit.

(4) The meeting shall be held and conducted in such manner as the court directs, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints.

Right of Authority, approved securities exchange and holders of relevant debentures to apply to court for order

267A. Without prejudice to any other right of action or remedy in any written law or rule of law, a holder of relevant debentures, the Authority or an approved securities exchange (in a case where the relevant debentures are quoted or listed for quotation on that approved securities exchange) may apply to the court for an order to compel the trustee for the holders of such relevant debentures to perform his duties as set out in the trust deed relating to those relevant debentures, and the court may either make the order on such terms as it considers appropriate, or dismiss the application.

Obligations of borrowing entity

268. ~~(1) Where there is a trustee for the holders of any debentures of a borrowing entity, the directors or equivalent persons of the borrowing entity shall~~

~~(a) at the end of a period not exceeding 3 months ending on a day (being a day after the date of the issue of the relevant prospectus) which the trustee is hereby required to notify the borrowing entity in writing; and~~

~~(b) at the end of each succeeding period thereafter, being a period of 3 months or such shorter time as the trustee may, in any special circumstances allow,~~

~~prepare a report that relates to that period and complies with the requirements of subsection (2) and within one month after the end of each such period lodge a copy of the report relating to that period with the Authority and with the trustee.~~

~~(2) The report referred to in subsection (1) shall be signed by not less than 2 of the directors or equivalent persons on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of subsection (1), shall state~~

~~(a) whether or not the limitations on the amount that the entity may borrow have been exceeded;~~

~~— (b) — whether or not the borrowing entity and each of its guarantor entities have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;~~

~~— (c) — whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;~~

~~— (d) — whether or not any circumstances affecting the borrowing entity, its subsidiaries or its guarantor entities or any of them have occurred which materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of those circumstances;~~

~~— (e) — whether or not there has been any substantial change in the nature of the business of the borrowing entity or any of its subsidiaries or any of its guarantor entities since the debentures were first issued which has not previously been reported upon as required by this section and, if so, particulars of that change; and~~

~~— (f) — where the borrowing entity has deposited money with or lent money to or assumed any liability of a corporation which is related to the borrowing entity, particulars of —~~

~~— (i) — the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report; and~~

~~— (ii) — the total amounts owing to the borrowing entity in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report,~~

~~distinguishing between deposits, loans and assumptions of liabilities which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing entity and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing entity.~~

~~(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.~~

(41) Where there is a trustee for the holders of any relevant debentures issued by a borrowing entity, the borrowing entity and each of its guarantor entities which has guaranteed the repayment of the moneys raised by the issue of those relevant debentures shall, whether or not any demand therefor has been made —

(a) in writing furnish the trustee, within 21 days after the creation of the charge, with the particulars of any charge created by the entity or the guarantor entity, as the case requires; and

(b) when the amount to be advanced on the security of the charge is indeterminate, in writing furnish the trustee, within 7 days after the advance, with particulars of the amount or amounts in fact advanced.

(52) Where any such advance referred to in subsection (41)(b) is merged in a current account with bankers or trade creditors, it shall be sufficient for particulars of the net amount outstanding in respect of any such advance to be furnished every 3 months.

(63) The directors or equivalent persons of every borrowing entity and of every guarantor entity shall cause to be made out and lodged ~~with the Authority and~~ with the trustee for the holders of the relevant debentures, if any —

(a) a profit and loss account for the first 6 months of every financial year of the entity and a balance-sheet as at the end of that period, not later than 3 months after the expiration of the period of 6 months; and

(b) a profit and loss account for every financial year of the entity and a balance-sheet as at the end of that period, not later than 5 months after the expiration of that financial year.

(3A) Any person who furnishes any information contained in a profit and loss account or balance-sheet required under subsection (3) shall use due care to ensure that the information is not false or misleading in any material particular.

(74) Any person who fails to comply with subsection (63) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(4A) Any person who contravenes subsection (3A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(85) Section 201(4) to (7) and (11) to (16) and section 207(1), (2) and (7) of the Companies Act (Cap. 50), shall, with such adaptations as are necessary, be applicable to every profit and loss account and balance-sheet made out and lodged under subsection (63) as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections.

(96) ~~Where —~~

~~(a) — the directors or equivalent persons of a borrowing entity do not lodge with the trustee for the holders of debentures a report as required by subsection (1); or~~

~~(b) — the directors or equivalent persons of a borrowing entity or the directors of a guarantor entity do not lodge with the trustee the balance sheets and profit and loss accounts as required by subsection (6) within the time prescribed,~~

the trustee shall immediately lodge notice of that fact with the Authority~~Where the directors or equivalent persons of a borrowing entity, or the directors or equivalent persons of a guarantor entity, do not lodge with the trustee the profit and loss accounts and balance-sheets as required under subsection (3) within the time prescribed under that subsection, the trustee shall immediately lodge notice of that fact with the~~
Authority.

(107) Notwithstanding anything in subsection (85) —

- (a) a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (63)(a) need not be audited; and
- (b) a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (63)(b) need not be audited, or the audit thereof may be of a limited nature or extent, if the trustee for the holders of the relevant debentures of the borrowing entity has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(118) Where the trustee has by notice in writing given his consent under subsection (47), the directors or equivalent persons of the borrowing entity, or the directors or equivalent persons of the guarantor entity, in respect of whose profit and loss account and balance-sheet the notice was given, shall lodge with the Authority a copy of the notice at the time when the profit and loss account and balance-sheet to which the notice relates are lodged with the Authority.

(129) Notwithstanding anything in this section, a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (63) may, unless the trustee for the holders of the relevant debentures of the borrowing entity otherwise requires in writing, be based upon the value of the stock in trade of the borrowing entity or the guarantor entity, as the case may be, as reasonably estimated by the directors or equivalent persons of the borrowing entity or guarantor entity.

(130) The estimation of the directors or equivalent persons referred to in subsection (129) shall be made on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance-sheet of that entity laid before the entity at its last preceding annual general meeting and certified in writing by the directors or equivalent persons as such.

Additional obligations of borrowing entity, where relevant debentures are not listed on approved exchange

268A.—(1) A borrowing entity that issues any relevant debentures which are not listed on an approved exchange (referred to in this section as unlisted relevant debentures) shall, if the unlisted relevant debentures have a tenure of 12 months or longer, prepare and make available, to the holders of the relevant debentures, in respect of the period of 6 months beginning on the date of issuance of the relevant debentures and each subsequent period of 6 months, a report covering the period of 6 months (referred to in this section as a semi-annual report), in accordance with this section and such other requirements as may be prescribed by the Authority by regulations made under section 341.

(2) The borrowing entity shall ensure that each semi-annual report covering a period of 6 months is lodged with the trustee for the holders of the unlisted relevant debentures, not later than 2 months after the end of that period.

(3) Where the borrowing entity does not lodge with the trustee for the holders of unlisted relevant debentures a semi-annual report as required under subsection (2), the trustee shall immediately lodge notice of that fact with the Authority.

(4) A borrowing entity shall immediately disclose, in such form and manner as may be prescribed by the Authority by regulations made under section 341, to holders of unlisted relevant debentures any information which may materially affect —

(a) the risks and returns of the unlisted relevant debentures; or

(b) the price or value of the unlisted relevant debentures.

(5) Any person who contravenes subsection (1), (2) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

(6) Where the terms of any unlisted relevant debentures provide for redemption at the option of the holder of the unlisted relevant debentures, the borrowing entity shall —

(a) make available bid or redemption prices of the unlisted relevant debentures, at the frequency at which the borrowing entity has committed to buying back the unlisted relevant debentures or once every fortnight, whichever is more frequent, in such form and manner as may be prescribed by the Authority by regulations made under section 341;

(b) if the published bid prices are indicative and may not be the actual bid prices, clearly state this fact, wherever the published bid prices appear, in such form and manner as may be prescribed by the Authority by regulations made under section 341; and

(c) ensure that the bid or redemption prices are determined in an independent and fair manner.

(7) A borrowing entity shall ensure that each profit and loss account or balance-sheet that its directors or equivalent persons are required to lodge under section 268(6) is made available, in such form and manner as may be prescribed by the Authority by regulations made under section 341, to holders of unlisted relevant debentures, on the day of lodgment of the profit and loss account or balance-sheet, as the case may be, with the trustee for the holders of the unlisted relevant debentures.

(8) Any person who contravenes subsection (6) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(9) Any person who furnishes any information contained in a semi-annual report required under subsection (2) shall use due care to ensure that the information is not false or misleading in any material particular.

(10) Any person who contravenes subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

Obligation of guarantor entity to furnish information

269.—(1) For the purpose of the preparation of a report that, by this Subdivision, is required to be signed by or on behalf of the directors or equivalent persons, or persons approved by the Authority, of a borrowing entity or any of them, that borrowing entity may, by notice in writing, require any of its guarantor entities to furnish it with any information relating to that guarantor entity which is, by this Subdivision, required to be contained in that report.

(2) The guarantor entity shall furnish the borrowing entity with the information required under subsection (1) before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice.

(3) A guarantor entity which fails to comply with a requirement contained in a notice given under subsection (1) and every officer or equivalent person of that entity who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

Loans and deposits to be immediately repayable on certain events

270.—(1) Where there is, in any prospectus issued in connection with an offer of relevant debentures, a statement as to any particular purpose or project for which the moneys received by the borrowing entity in response to the offer are to be applied, the borrowing entity shall, where there is a trustee for the holders of those relevant debentures, from time to time make reports to the trustee as to the progress that has been made towards achieving such purpose or completing such project.

(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the relevant debentures under section 268(1).

(3) When it appears to the trustee for the holders of the relevant debentures that such purpose or project has not been achieved or completed —

(a) within the time stated in the prospectus within which the purpose or project is to be achieved or completed; or

(b) where no such time was stated, within a reasonable time,

the trustee may and, if in his opinion it is necessary for the protection of the interests of the holders of the relevant debentures, shall give notice in writing to the borrowing entity requiring it to repay the moneys so received by the borrowing entity and, within one month after such notice is given, lodge with the Authority a copy thereof.

(4) The trustee shall not give notice under subsection (3) if he is satisfied —

- (a) that the purpose or project has been substantially achieved or completed;
- (b) that the interests of the holders of relevant debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
- (c) that the failure to achieve the purpose or project was due to circumstances beyond the control of the borrowing entity that could not reasonably have been foreseen by the borrowing entity at the time that the prospectus was issued.

(5) Upon receipt by the borrowing entity of a notice referred to in subsection (3), the borrowing entity shall be liable to repay, and on demand in writing by a person entitled thereto shall immediately repay to him any moneys owing to him as the result of a loan or deposit made in response to the offer unless —

- (a) before the moneys were accepted by the borrowing entity, the borrowing entity had given notice in writing to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used and the moneys were accepted by the borrowing entity accordingly; or
- (b) the borrowing entity by notice in writing served on the holders of the relevant debentures —
 - (i) had specified the purpose or project for which the moneys would in fact be applied by the borrowing entity; and
 - (ii) had offered to repay the moneys to the holders of the relevant debentures, and that person had not within 14 days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the borrowing entity repayment of the money.

(6) Where the borrowing entity has given a notice in writing as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the borrowing entity, this section shall apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

Liability of trustees for relevant debenture holders

271.—(1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of relevant debentures, or in any contract with the holders of relevant debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee.

(2) Subsection (1) shall not invalidate —

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given —

- (i) on the agreement thereto of a majority of not less than three fourths in nominal value of the relevant debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
- (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on his ceasing to act.

(3) Subsection (1) shall not operate —

- (a) to invalidate any provision in force on 29th December 1967 so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or
- (b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

Subdivision (45) — Exemptions

Issue or transfer of securities investments for no consideration

272.—(1) Subdivisions (23) and (34) of this Division (other than section 257) shall not apply to an offer of shares or relevant debentures of an entity or units in a business trust if no consideration is or will be given for the issue or transfer of the shares or relevant debentures or units in a business trust.

(2) Subdivisions (23) and (34) of this Division (other than section 257) shall not apply to an offer of units of shares or relevant debentures of an entity or derivatives of units in a business trust if —

- (a) no consideration is or will be given for the issue or transfer of the units of shares or relevant debentures or derivatives of units; and
- (b) no consideration is or will be given for the underlying shares or relevant debentures or units in the business trust on the exercise or conversion of the units of shares or relevant debentures or derivatives of units.

Small offers

272A.—(1) Subdivisions (23) and (34) of this Division (other than section 257) shall not apply to personal offers of securities investments of an entity or business trust by a person if —

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed —
 - (i) \$5 million (or its equivalent in a foreign currency); or
 - (ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);

(b) in respect of each offer, the person making the offer gives the person to whom he makes the offer —

(i) in the case where units or derivatives of units in a business trust are being offered and the business trust is not registered under the Business Trusts Act (Cap. 31A), the following statement in writing:

“This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act.”;

(ii) in all other cases, the following statement in writing:

“This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”; and

(iii) a notification in writing that the ~~securities~~investments to which the offer (referred to in this sub-paragraph as the initial offer) relates shall not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivisions (~~23~~) and (~~34~~) of this Division;

(B) in reliance on subsection (8)(c) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the ~~investments~~securities were acquired under the initial offer, in reliance on the exemption under this subsection;

(c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in capital market products in respect of investmentssecurities;

(ii) an exempt person in respect of dealing in ~~securities~~capital market products in respect of investments; or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of investmentssecurities, or who is exempted therefrom in respect of such dealing; and

(e) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

- (i) the prospectus has expired pursuant to section 250; or
- (ii) the person making the offer has before making the offer informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection.

(2) For the purposes of subsection (1)(b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of ~~securities~~investments is one that —

- (a) may be accepted only by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in that offer, having regard to —
 - (i) any previous contact before the date of the offer between the person making the offer and that person;
 - (ii) any previous professional or other connection established before that date between the person making the offer and that person; or
 - (iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —
 - (A) the person making the offer;
 - (B) the holder of a capital markets services licence to deal in capital market products in respect of investmentssecurities;
 - (C) an exempt person in respect of dealing in capital market products in respect of investmentssecurities;
 - (D) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;
 - (E) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act; or
 - (F) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of investmentssecurities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind.

(4) In determining the amount raised by an offer, the following shall be included:

- (a) the amount payable for the ~~securities~~investments at the time they are allotted, issued or sold;
- (b) if the ~~investments~~securities are issued partly-paid, any amount payable at a future time if a call is made;
- (c) if the ~~investments~~securities carry a right (by whatever name called) to be converted into other ~~investments~~securities or to acquire other ~~investments~~securities, any amount payable on the exercise of the right to convert them into, or to acquire, other ~~investments~~securities.

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1)(a), each amount raised —

- (a) by that person from any offer of ~~investments~~securities issued by the same entity; or
- (b) by that person or another person from any offer of ~~investments~~securities of an entity or business trust, ~~units or derivatives of units in a business trust~~, or units in a collective investment scheme, which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), ~~section 282V(1) or 302B(1)~~ shall be included.

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of ~~investments~~securities made by a person acting as an agent of another person shall be treated as an offer made by that other person.

(8) Where ~~investments~~securities acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the ~~investments~~securities to another person, Subdivisions ~~(32)~~ and ~~(43)~~ of this Division shall apply to the offer from the first-mentioned person to the second-mentioned person which resulted in that sale, unless —

- (a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);
- (b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the ~~investments~~securities were acquired under the initial offer; or
- (c) such offer is one —
 - (i) that may be accepted only by the person to whom it is made;
 - (ii) that is made to a person who is likely to be interested in the offer having regard to —
 - (A) any previous contact before the date of the offer between the person making the initial offer and that person;

- (B) any previous professional or other connection established before that date between the person making the initial offer and that person; or
- (C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —
 - (CA) the person making the initial offer;
 - (CB) the holder of a capital markets services licence to deal in securities capital market products in respect of investments;
 - (CC) an exempt person in respect of dealing in capital market products in respect of investments securities;
 - (CD) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;
 - (CE) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act; or
 - (CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of investments securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind;

- (iii) in respect of which the first-mentioned person has given the second-mentioned person —

- (A) in the case where units or derivatives of units in a business trust are being offered and the business trust is not registered under the Business Trusts Act (Cap. 31A);, the following statement in writing:

“This offer is made in reliance on the exemption under section 272A(8)(c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act.”;

- (B) in all other case, the following statement in writing:

“This offer is made in reliance on the exemption under section 272A(8)(c) of the Securities and Futures Act. It is not made in or

accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”; and

(~~BC~~) a notification in writing that the ~~securities~~investments being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(~~BCA~~) in compliance with Subdivisions (~~23~~) and (~~34~~) of this Division;

(~~BCB~~) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(~~BCC~~) where at least 6 months have elapsed from the date the ~~investments~~securities were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(A) the holder of a capital markets services licence to deal in ~~securities~~capital market products in respect of investments;

(B) an exempt person in respect of dealing in capital market products in respect of ~~investments~~securities; or

(C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of ~~investments~~securities, or who is exempted therefrom in respect of such dealing.

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(c)(iii).

(10) In subsections (1)(c) and (8)(c)(iv), “advertisement” means —

(a) a written or printed communication;

(b) a communication by radio, television or other medium of communication; or

(c) a communication by means of a recorded telephone message,

that is published in connection with an offer of ~~securities~~investments, but does not include —

(i) a document —

- (A) purporting to describe the investments~~securities~~ being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity or the business trust; and
- (B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the investments~~securities~~ being offered;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved~~securities~~ exchange, ~~futures exchange~~ or overseas ~~securities~~ exchange, which is made by any person; or
- (iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the underlying entity or any entity, the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting.

(11) In subsection (10)(i)(A), the reference to the affairs of the person making the offer, the issuer or, where applicable, the underlying entity or the business trust shall —

- (a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); ~~and~~
- (b) in the case where the person making the offer, the issuer or the underlying entity is not a corporation, be construed as referring to such matters as may be prescribed by the Authority; and
- (c) in any other the case of the business trust, be construed as referring to such matters as may be prescribed by the Authority.

Private placement

272B.—(1) Subdivisions (~~23~~) and (~~34~~) of this Division (other than section 257) shall not apply to offers of ~~securities~~investments of an entity or business trust that are made by a person if —

- (a) the offers are made to no more than 50 persons within any period of 12 months;
- (b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
 - (i) the holder of a capital markets services licence to deal in securitiescapital market products in respect of investments;

- (ii) an exempt person in respect of dealing in capital market products in respect of investmentssecurities; or
 - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of investmentssecurities, or who is exempted therefrom in respect of such dealing; and
- (d) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —
- (i) the prospectus has expired pursuant to section 250; or
 - (ii) the person making the offer has before making the offer —
 - (A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and
 - (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(a).

(3) In determining whether offers of ~~securities~~investments by a person are made to no more than the applicable number of persons specified in subsection (1)(a) within a period of 12 months, each person to whom —

- (a) an offer of investmentssecurities issued by the same entity is made by the first-mentioned person; or
- (b) an offer of investmentssecurities of an entity or business trust; ~~units or derivatives of units in a business trust~~, or units in a collective investment scheme, is made by the first-mentioned person or another person where such offer is a closely related offer,

if any, within that period in reliance on the exemption under this section; ~~section 282W~~ or 302C shall be included.

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

- (a) an offer of investmentssecurities to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the investmentssecurities which are the subject of the offer;
- (b) an offer of investmentssecurities to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed

primarily for the purpose of acquiring the investmentssecurities which are the subject of the offer;

(c) an offer of investmentssecurities to 2 or more persons who will own the investmentssecurities acquired as joint owners shall be treated as an offer to a single person;

(d) an offer of investmentssecurities to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;

(e) offers of investmentssecurities made by a person as an agent of another person shall be treated as offers made by that other person;

(f) where an offer is made to a person with a view to another person acquiring an interest in those investmentssecurities by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the investmentssecurities are made to no more than the applicable number of persons specified in subsection (1)(a); and

(g) where —

(i) an offer of investmentssecurities is made to a person in reliance on the exemption under subsection (1) with a view to those investmentssecurities being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 280,

both persons shall be counted for the purposes of determining whether offers of the investmentssecurities are made to no more than the applicable number of persons specified in subsection (1)(a).

(6) In subsection (1)(b), “advertisement” has the same meaning as in section 272A(10).

Offer made under certain circumstances

273.—(1) Subdivisions (23) and (34) of this Division (other than section 257) shall not apply to an offer of investmentssecurities if —

(a) it is made in connection with a take-over offer which is in compliance with the Take-over Code;

(b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation —

- (i) to all members of the corporation or all members of the corporation holding shares of that class; or
- (ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs of the country in which the corporation was incorporated;

(c) it is made in connection with a proposed compromise or arrangement between —

- (i) an unlisted corporation and its creditors or a class of them; or
- (ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country in which the corporation was incorporated;

(ca) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some or all of the shares of a particular class in a corporation —

- (i) to all members of the corporation or all members of the corporation holding shares of that class; or
- (ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code is applicable to it;

(cb) it is made in connection with a proposed compromise or arrangement between —

- (i) a corporation and its creditors or a class of them; or
- (ii) a corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code is applicable to it;

(cc) it is an offer to enter into an underwriting agreement relating to investments securities;

(cd) it is an offer of securities of an entity —

- (i) being an entity which is formed or constituted in Singapore or otherwise, whose securities are not listed for quotation on an approved securities exchange; or

- (ii) being an entity which is not formed or constituted in Singapore, whose securities are listed for quotation on an approved securities exchange and such listing is not a primary listing,

that is made to existing members or relevant debenture holders of that entity (whether or not it is renounceable in favour of persons other than existing members or relevant debenture holders);

- (ce) it is an offer of shares or relevant debentures of an entity or units in a business trust made to any existing member or relevant debenture holder of the entity, existing unitholder of the business trust or any holder of relevant debentures of the trustee-manager issued in its capacity as trustee-manager of the business trust, as the case may be, whose shares or units are listed for quotation on an approved securities exchange;
- (cf) it is an offer of relevant debentures of an entity made to any existing relevant debenture holder of the entity whose relevant debentures are listed for quotation on an approved securities exchange;
- (cg) it is an offer of units of shares or relevant debentures of an entity or derivatives of units in a business trust made to any existing member or relevant debenture holder of the entity, any existing unitholder of the business trust or any holder of relevant debentures of the trustee-manager issued in its capacity as trustee-manager of the business trust, as the case may be, whose shares or units are listed for quotation on an approved securities exchange, where such units or derivatives of units may only be exercised or converted by any existing member or relevant debenture holder into shares or relevant debentures, as the case may be, of the entity, or may only be exercised or converted by any existing unitholder or holder of relevant debentures into units of the business trust, as the case may be;
- (ch) it is an offer of units of relevant debentures of an entity made to any existing relevant debenture holder of the entity whose relevant debentures are listed on an approved securities exchange, where such units may only be exercised or converted by any existing relevant debenture holder into relevant debentures of the entity;
- (ci) it is an offer of securities of a corporation made in the circumstances specified under section 306 of the Companies Act (Cap. 50);
- (d) it is an offer of shares or relevant debentures or units in a business trust (not being such excluded shares or excluded relevant debentures or excluded units in a business trust as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on an approved securities exchange, and are traded on the exchange;
- (e) it is an offer of ~~units of shares or debentures~~securities-based derivative contracts (not being such excluded ~~units of shares or debentures~~securities-based derivative contracts as may be prescribed by the Authority) where —

- (i) the securities-based derivative contracts units of shares or debentures have been previously issued, are listed for quotation or quoted on an approved securities exchange, and are traded on the exchange; or
 - (ii) an application has been or will be made for permission for the securities-based derivative contracts units of shares or debentures to be listed for quotation or quoted on an approved securities exchange or a recognised securities exchange and the securities underlying the securities-based derivative contracts shares or debentures have been previously issued and are listed for quotation on an approved securities exchange or a recognised securities exchange; or
 - (iii) the offer of the securities-based derivative contracts is subject to the disclosure requirements as may be prescribed by the Authority and the securities underlying these securities-based derivative contracts have been previously issued and are listed for quotation on an approved exchange or a recognised securities exchange; or
 - (iv) the discharge of the obligations under, or the value of, the securities-based derivative contracts, is ultimately determined, derived from or varies by reference to (wholly or in part), the value or amount of one or more securities indexes only.
 - (f) it is made (whether or not in relation to securities investments that have been previously issued) by an entity or the trustee of the business trust to a qualifying person, where the investments securities are to be held by or for the benefit of the qualifying person and are the investments securities of the entity (or where applicable, the business trust) or any of its related parties.
- (1A) An offer of investments securities does not come within subsection (1)(d) or (e) if —
- (a) the investments securities being offered are borrowed by the issuer from an existing shareholder, holder of a relevant debenture, holder of derivatives of units in a business trust or holder of units of shares or relevant debentures, solely for the purpose of facilitating the offer of investments securities by the issuer; and
 - (b) such borrowing is made under an agreement or arrangement between the issuer and the shareholder or holder which promises the issue or allotment of investments securities by the issuer to the shareholder or holder at the same time or shortly after the offer.
- (2) An offer of investments securities comes within subsection (1)(f) only if no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
- (a) the holder of a capital markets services licence to deal in securities capital market products in respect of investments;

(b) an exempt person in respect of dealing in capital market products in respect of investmentssecurities; or

(c) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of investmentssecurities, or who is exempted therefrom in respect of such dealing.

(3) [*Deleted by Act 1/2005*]

(4) For the purposes of subsection (1)(f), a person is a qualifying person in relation to an entity or a business trust if he is a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the entity or the trustee or a related corporation of that entity or that trustee (being a corporation), or if he is the spouse, widow, widower or a child, adopted child or step-child below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

(5) Where, on the application of any person interested, the Authority declares that circumstances exist whereby —

(a) the cost of providing a prospectus for an offer of ~~securities~~investments outweighs the resulting protection to investors; or

(b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer of investmentssecurities,

then Subdivisions (~~23~~) and (~~34~~) of this Division (other than section 257) shall not apply to such an offer for a period of 6 months from the date of the declaration.

(6) The Authority may, on making a declaration under subsection (5), impose such conditions or restrictions on the offer as it may determine.

(7) A declaration made under subsection (5) shall be final.

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

(8A) A person shall not advertise an offer or intended offer of any investments referred to in subsection (1)(d) or (e), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the investments, unless the advertisement or publication complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(8B) Any person who contravenes subsection (8A), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or

to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(9) In subsection (1)(b) and (c), “unlisted corporation” means a corporation —

(a) that is not a company; and

(b) the securities shares or relevant debentures, or units of shares or relevant debentures of which are not listed for quotation on any approved securities exchange.

(10) In subsection (1)(ca) and (cb), “corporation” means a corporation that is not a company.

Offer made to institutional investors

274. Subdivisions ~~(23)~~ and ~~(34)~~ of this Division (other than section 257) shall not apply to an offer of securities investments, whether or not they have been previously issued, made to an institutional investor.

Offer made to accredited investors and certain other persons

275.—(1) Subdivisions ~~(23)~~ and ~~(34)~~ of this Division (other than section 257) shall not apply to an offer of investments securities, whether or not they have been previously issued, where the offer is made to a relevant person, if —

(a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities capital market products in respect of investments;

(ii) an exempt person in respect of dealing in capital market products in respect of investments securities; or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of investments securities, or who is exempted therefrom in respect of such dealing; and

(c) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

(1A) Subdivisions (23) and (34) of this Division (other than section 257) shall not apply to an offer of securitiesinvestments to a person who acquires the investmentssecurities as principal, whether or not the investmentssecurities have been previously issued, if —

(a) the offer is on terms that the investmentssecurities may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securitiescapital market products in respect of investments;

(ii) an exempt person in respect of dealing in capital market products in respect of investmentssecurities; or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of investmentssecurities, or who is exempted therefrom in respect of such dealing; and

(d) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

(2) In this section —

“advertisement” means —

(a) a written or printed communication;

(b) a communication by radio, television or other medium of communication; or

(c) a communication by means of a recorded telephone message, that is published in connection with an offer in respect of ~~securities~~investments, but does not include —

- (i) an information memorandum;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved securities exchange, ~~futures exchange~~ or overseas securities exchange, which is made by any person; or
- (iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the underlying entity or any entity, the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;

“information memorandum” means a document —

- (a) purporting to describe the ~~securities~~investments being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity, the trustee of the business trust or the business trust; and
- (b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (1A) is to be made so as to assist them in making an investment decision in respect of the ~~investments~~securities being offered;

“relevant person” means —

- (a) an accredited investor;
- (b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;
- (c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;
- (d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or
- (e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

(2A) In the definition of “information memorandum” in subsection (2), the reference to the affairs of the person making the offer, the issuer or, where applicable, the underlying entity or the business trust shall —

- (a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and

(b) in the case where the person making the offer, the issuer or the underlying entity is not a corporation, be construed to refer to such matters as may be prescribed by the Authority; and

(c) ~~in any other case~~ the case of a business trust, be construed as referring to such matters as may be prescribed by the Authority.

(3) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in ~~securities~~ capital market products in respect of investments for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires ~~securities~~ investments under section 274 or this section for his own account shall be considered an exempt person even though he does not comply with that requirement.

(4) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (1A)(a).

Offer of securities acquired pursuant to section 274 or 275

276.—(1) Notwithstanding sections 272A, 272B, 273(1)(d), (e) and (f), 277, 278 and 279 but subject to subsection (7), where ~~securities~~ investments initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold within the period of 6 months from the date of the initial acquisition to any person other than —

(a) an institutional investor;

(b) a relevant person as defined in section 275(2); or

(c) any person pursuant to an offer referred to in section 275(1A),

then Subdivisions (23) and (34) of this Division shall apply to the offer resulting in that sale.

(1A) The reference to the sale of ~~securities~~ investments under subsection (1) shall, in a case where the ~~investments~~ securities initially acquired are relevant debentures, ~~or~~ units of shares or relevant debentures or derivatives of units in a business trust, with an attached right of conversion into shares, ~~or~~ relevant debentures or units in the business trust, include a reference to the sale of the converted shares, ~~or~~ relevant debentures or units in the business trust.

(2) Where ~~investments~~ securities initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold to —

(a) an institutional investor;

(b) a relevant person as defined in section 275(2); or

(c) any person pursuant to an offer referred to in section 275(1A),

Subdivisions (23) and (34) of this Division shall not apply to the offer resulting in that sale.

(3) Subject to subsection (7), ~~investments~~ securities of a corporation (other than a corporation that is an accredited investor) —

- (a) the sole business of which is to hold investments; and
- (b) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any ~~investments~~~~securities~~ pursuant to an offer made in reliance on an exemption under section 275 unless —

- (i) that transfer —
 - (A) is made only to institutional investors or relevant persons as defined in section 275(2); or
 - (B) arises from an offer referred to in section 275(1A);
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

(4) Subject to subsection (7), where —

- (a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and
- (b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust shall not be transferred within 6 months after ~~investments~~~~securities~~ are acquired for the trust pursuant to an offer made in reliance on an exemption under section 275 unless —

- (i) that transfer —
 - (A) is made only to institutional investors or relevant persons as defined in section 275(2); or
 - (B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

(5) For the avoidance of doubt, the reference to beneficiaries in subsection (4) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

(6) For the avoidance of doubt, where any ~~investments~~~~securities~~ are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275, an offer to sell those ~~investments~~~~securities~~ may be made in reliance on an exemption under section 273(1)(d) or (e) after 6 months have elapsed from the date of the first-mentioned offer.

(7) Subsections (1), (3) and (4) shall not apply where the investmentssecurities of the corporation acquired are of the same class as other investmentssecurities of the corporation —

(a) ~~an offer~~ in respect of which —

(i) an offer has previously been made in; or

(ii) accompanied by a prospectus the listing for quotation has previously been accompanied by,

an offer information statement, introductory document, shareholders' circular for a reverse takeover, document issued for the purposes of a scheme of arrangement or other similar document approved by an approved exchange; and

(b) which are listed for quotation on an approvedsecurities exchange.

Offer made using offer information statement

277.—(1) Subject to subsection (1A), Subdivisions (23) and (34) of this Division (other than section 257) shall not apply to an offer of securitiesinvestments (not being such investmentssecurities as may be prescribed by the Authority) issued by an entity or business trust whose shares or units are listed for quotation on an approvedsecurities exchange, whether by means of a rights issue or otherwise, if —

(a) in the case where —

(i) the investmentssecurities offered are units of shares or relevant debentures, the shares or relevant debentures are those of the entity that issued the units; and

(ii) the investments offered are derivatives of units in a business trust, the units are those of the business trust that are issued by the trustee-manager in its capacity as trustee-manager of the business trust;

(b) an offer information statement relating to the offer which complies with such form and content requirements as may be prescribed by the Authority is lodged with the Authority; and

(c) either —

(i) the offer is made in or accompanied by the offer information statement referred to in paragraph (b); or

(ii) all the conditions in subsection (1B) are satisfied.

(1A) Subsection (1) shall only apply to an offer of investmentssecurities referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

(1B) The conditions referred to in subsection (1)(c)(ii) are —

(a) the offer is made using any automated teller machine or such other electronic means as may be prescribed by the Authority;

(b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

(ii) that he should read the offer information statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase investmentssecurities; and

(c) the person making the offer complies with such other requirements as the Authority may prescribe.

(2) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.

(3) Sections 249, 249A, 253, 254 and 255 shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(4) For the purposes of subsection (3) —

(a) a reference in section 249 or 249A to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and

(b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 shall be read as a reference to any information prescribed under subsection (1)(b).

(5) Where the written consent of an expert is required to be given under section 249 (as applied in relation to an offer information statement under subsection (3)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

(6) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (3)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

(7) A person shall not advertise an offer or intended offer of any investments referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the investments, unless the advertisement or publication complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(8) Any person who contravenes subsection (7), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or

to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Offer in respect of international relevant debentures

278.—(1) Subdivisions (23) and (34) of this Division (other than section 257) shall not apply to an offer of relevant debentures, or units of relevant debentures, by a body incorporated in a country outside Singapore where the offer —

(a) is made by the holder of a capital markets services licence to deal in securities capital market products in respect of investments or an exempt person under section 99(1)(a) or (b), to such institutional, professional or business investors as the Authority may, by order in the *Gazette*, specify, being persons or bodies that appear to the Authority to have sufficient expertise to understand any risk involved in buying or selling those relevant debentures, or units of relevant debentures (whether as principal or agent); and

(b) complies with the conditions specified in subsection (2).

(2) The conditions referred to in subsection (1)(b) are that —

(a) the relevant debentures, or units of relevant debentures, are denominated in a currency, other than the Singapore dollar, and each relevant debenture, or each unit of relevant debenture, has a face value of at least US\$5,000 or its equivalent in another currency; and

(b) the shares of the issuing corporation are listed on a recognised securities exchange or the offer is guaranteed by a corporation whose shares are listed on a recognised securities exchange.

(3) The Authority may by order in the *Gazette* add to, vary or amend the conditions specified in subsection (2).

Offer of relevant debentures made by Government or international financial institutions

279. Subdivisions (23) and (34) of this Division shall not apply to an offer of relevant debentures, or units of relevant debentures, made by or guaranteed by —

(a) the Government; or

(b) an international financial institution in which Singapore holds membership of any class or description, whether or not it holds any share in the share capital of that institution.

Making offer using automated teller machine or electronic means

280.—(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of securities investments using —

(a) any automated teller machine; or

(b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 240(1)(a) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 240(4) that the offer be made in or accompanied by a profile statement in respect of the offer.

(2) For the avoidance of doubt, a prospectus which complies with all other requirements of section 240(1)(a) or, where applicable, a profile statement which complies with all other requirements of section 240(4) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase investmentssecurities.

Revocation of exemption

281.—(1) Where the Authority considers that a person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section 273(6), or that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section shall be final and conclusive and there shall be no appeal therefrom.

Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act

282. For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

Subdivision (6) — General

Power of Authority to issue directions

282A.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions, whether of a general or specific nature, by notice in writing —

- (a) to a person making an offer of investments, being an offer made in or accompanied by a prospectus or profile statement or an offer referred to in section 280, on matters in connection with the offer;
- (b) to a person referred to in paragraph (a) who is a borrowing entity, on matters in connection with the requirements and obligations under Subdivision (5) of this Division, in addition to the matters referred to in paragraph (a); or
- (c) to a trustee appointed under section 265A(1).

(2) Any person to whom a notice is given under subsection (1) shall comply with every direction contained in the notice.

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

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

(5) No criminal or civil liability shall be incurred by a trustee appointed under section 265A(1), or by any person acting on behalf of such a trustee, for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the compliance or purported compliance with a direction issued to the trustee under subsection (1).

Division 1A — Business Trusts

Subdivision (1) — Interpretation

Preliminary provisions

282A.—(1) In this Division, unless the context otherwise requires —

“control”, in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

- (a) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and
- (b) any practice or pattern of behaviour of that person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust);

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by

~~law or under any contract or order of court to be exercised for the benefit of other persons;~~

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

~~“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, step son, daughter, adopted daughter, step daughter, father, step father, mother, step mother, brother, step brother, sister or step sister;~~

~~“issuer”, in relation to an offer of units or derivatives of units in a business trust, means—~~

~~— (a) in the case of units being offered, the trustee of the business trust in its capacity as the trustee that issued or will be issuing such units; or~~

~~— (b) in the case of derivatives of units being offered, the trustee of the business trust in its capacity as the trustee, or any other entity, that issued or will be issuing such derivatives of units;~~

~~“minimum subscription”, in relation to any units or derivatives of units in a business trust offered for subscription, means the amount stated in the prospectus relating to the offer, as the minimum amount which must be raised by the issue of the units or derivatives of units so offered failing which no units or derivatives of units will be allotted or issued;~~

~~“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, units or derivatives of units in a business trust or proposed business trust to be issued or sold and which contains the information required to be included in a prospectus under section 282F, except for such information as may be prescribed by the Authority;~~

~~“profile statement” means a profile statement referred to in section 282C(4);~~

~~“promoter”, in relation to a prospectus issued in connection with a business trust, means a promoter of the business trust who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;~~

~~“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of units or derivatives of units in a business trust or proposed business trust and includes any document deemed to be a prospectus under section 282Q, but does not include—~~

~~— (a) a profile statement; or~~

~~— (b) any material, advertisement or publication which is authorised by section 282L (other than subsection (5) thereof);~~

~~“recognised securities exchange” means a corporation which has been declared by the Authority, by order published in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;~~

~~“related party” means—~~

~~— (a) in relation to an entity —~~

~~— (i) a director or equivalent person of the entity;~~

~~— (ii) the chief executive officer or equivalent person of the entity;~~

~~— (iii) a person who controls the entity;~~

~~— (iv) a related corporation;~~

~~— (v) any other entity controlled by it;~~

~~— (vi) any other entity controlled by the person referred to in sub-paragraph (iii); and~~

~~— (vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and~~

~~— (b) in relation to an individual —~~

~~— (i) his immediate family;~~

~~— (ii) a trustee of any trust of which the individual or any member of the individual's immediate family is —~~

~~— (A) a beneficiary; or~~

~~— (B) where the trust is a discretionary trust, a discretionary object,~~

~~when the trustee acts in that capacity; and~~

~~— (iii) any corporation in which he and his immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the votes attached to all voting shares;~~

~~“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 282D(1), as the case may be;~~

~~“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 282D(1), as the case may be;~~

~~“trust deed” has the same meaning as “deed” in section 2 of the Business Trusts Act;~~

~~“trust property” has the same meaning as in section 2 of the Business Trusts Act.~~

~~(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.~~

~~(3) For the purposes of this Division, a person makes an offer of any units or derivatives of units in a business trust if, and only if, as principal —~~

~~— (a) he makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those units or derivatives of units by him or another person with whom he has made arrangements for that issue or sale; or~~

~~— (b) he invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those units or derivatives of units by him or another person with whom he has made arrangements for that issue or sale.~~

~~(4) In subsection (3), “sale” includes any disposal for valuable consideration.~~

~~Division not to apply to certain business trusts which are collective investment schemes~~

~~**282B.** This Division does not apply to an offer of units or derivatives of units in a business trust, where —~~

~~— (a) the business trust is also a collective investment scheme that has been authorised under section 286 or recognised under section 287; or~~

~~— (b) the business trust is also a collective investment scheme and the offer is made in reliance on an exemption under Subdivision (4) of Division 2.~~

~~Modification of provisions to certain offers~~

~~**282BA.** The Authority may, if it thinks it necessary in the interest of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of units or derivatives of units in a business trust as may be prescribed, and the provisions of this Division shall apply to such offer subject to such modifications or adaptations.~~

~~Subdivision (2) — Prospectus requirements~~

~~Requirement for prospectus and profile statement, where relevant~~

~~**282C.** (1) No person shall make an offer of units or derivatives of units in a business trust unless —~~

~~— (a) the business trust is a registered business trust or recognised business trust; and~~

~~— (b) the offer —~~

~~—— (i) is made in or accompanied by a prospectus in respect of the offer —~~

~~—— (A) that is prepared in accordance with section 282F;~~

~~—— (B) a copy of which, being one that has been signed in accordance with subsection (5), is lodged with the Authority; and~~

~~—— (C) that is registered by the Authority; and~~

~~—— (ii) complies with such requirements as may be prescribed by the Authority.~~

~~(2) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.~~

~~(3) A preliminary document referred to in subsection (2) shall contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.~~

~~(4) Notwithstanding subsection (1), an offer of units or derivatives of units in a business trust may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this section as a profile statement), instead of a prospectus, if—~~

~~—(a) a prospectus in respect of such offer is prepared in accordance with section 282F, and the profile statement is prepared in accordance with section 282G;~~

~~—(b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (5), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;~~

~~—(c) the prospectus and profile statement are registered by the Authority;~~

~~—(d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and~~

~~—(e) the offer complies with such requirements as may be prescribed by the Authority.~~

~~(5) The copy of a prospectus or profile statement lodged with the Authority shall be signed—~~

~~—(a) where the person making the offer is the issuer, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer;~~

~~—(b) where the person making the offer is an individual and is not the issuer—~~

~~——(i) by that person; and~~

~~——(ii) if the issuer is controlled by that person, one or more of his related parties, or that person and one or more of his related parties, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; and~~

~~—(c) where the person making the offer is an entity and is not the issuer—~~

~~——(i) by every director or equivalent person of that entity; and~~

~~——(ii) if the issuer is controlled by that entity, one or more of its related parties, or that entity and one or more of its related parties, by every director or equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer.~~

~~(6) A requirement under subsection (5) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed—~~

- ~~— (a) by that director or equivalent person; or~~
- ~~— (b) by a person who is authorised in writing by that director or equivalent person to sign on his behalf.~~

~~(7) A requirement under subsection (5) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed—~~

- ~~— (a) by that proposed director or equivalent person; or~~
- ~~— (b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his behalf.~~

~~(8) No person shall make any offer of units or derivatives of units in a business trust that has not been formed or does not exist.~~

~~(9) Any person who contravenes subsection (1) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~

~~(10) The Authority may register a prospectus or profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless—~~

- ~~— (a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (20);~~
- ~~— (b) the Authority gives to the person making the offer notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement—~~
 - ~~— (i) register the prospectus or profile statement; or~~
 - ~~— (ii) give the person making the offer a notice of an opportunity to be heard under subsection (20);~~
- ~~— (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends—~~
 - ~~— (i) register the prospectus or profile statement; or~~
 - ~~— (ii) give the person making the offer a notice of an opportunity to be heard under subsection (20); or~~
- ~~— (d) the person making the offer gives a notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.~~

~~(11) Where, after a notice of an opportunity to be heard has been given under subsection (10)(a), (b)(ii) or (c)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on~~

~~such date as it considers appropriate, except that that date shall not be earlier than such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.~~

~~(11A) For the purposes of subsections (10) and (11), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.~~

~~(12) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (5) and which contains the information required to be stipulated in the prospectus under section 282F, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.~~

~~(13) A person making an offer of units or derivatives of units in a business trust may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before but not after the registration of the prospectus or profile statement by the Authority.~~

~~(14) Subject to subsection (15) —~~

~~— (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be deemed, for the purposes of subsection (10), to have been lodged when such amendment was lodged; and~~

~~— (b) where any amendment to a profile statement is lodged, the profile statement shall be deemed, for the purposes of subsection (10), to have been lodged when such amendment was lodged.~~

~~(15) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended shall be deemed, for the purposes of subsection (10), to have been lodged when the original prospectus or profile statement was lodged with the Authority.~~

~~(16) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.~~

~~(17) The Authority may, for public information, publish —~~

~~— (a) a prospectus or profile statement lodged with the Authority under this section; and~~

~~— (b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1),~~

~~and, for the purposes of this subsection, the person making the offer shall provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation, in such form or medium for publication as the Authority may require.~~

~~(18) The Authority shall refuse to register a prospectus if —~~

~~— (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;~~

- ~~— (b) there is an omission from the prospectus of any information that is required to be included in it under section 282F;~~
 - ~~— (c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (5);~~
 - ~~— (d) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;~~
 - ~~— (e) any written consent of an expert to the issue of the prospectus required under section 282I, or a copy thereof which is verified as prescribed, is not lodged with the Authority;~~
 - ~~— (f) any written consent of an issue manager to the issue of the prospectus required under section 282J(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;~~
 - ~~— (g) any written consent of an underwriter to the issue of the prospectus required under section 282J(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or~~
 - ~~— (h) the Authority is of the opinion that it is not in the public interest to do so.~~
- ~~(19) The Authority shall refuse to register a profile statement if—~~
- ~~— (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;~~
 - ~~— (b) there is an omission from the profile statement of information required under section 282G to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;~~
 - ~~— (c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (5);~~
 - ~~— (d) any written consent of an expert to the issue of the profile statement required under section 282I, or a copy thereof which is verified as prescribed, is not lodged with the Authority;~~
 - ~~— (e) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;~~
 - ~~— (f) the prospectus has not been registered by the Authority;~~
 - ~~— (g) any written consent of an issue manager to the issue of the profile statement required under section 282J(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;~~
 - ~~— (h) any written consent of an underwriter to the issue of the profile statement required under section 282J(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or~~
 - ~~— (i) the Authority is of the opinion that it is not in the public interest to do so.~~
- ~~(20) The Authority shall not refuse to register a prospectus under subsection (18) or a profile statement under subsection (19) without giving the person making the offer~~

~~an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:~~

- ~~— (a) the person making the offer (being an entity), the issuer, the trustee manager of the business trust or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;~~
- ~~— (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere; or~~
- ~~— (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee manager of the business trust, or in relation to or in respect of the trust property of the business trust.~~

~~(21) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (18) or (19), appeal to the Minister whose decision shall be final.~~

~~(22) If —~~

- ~~— (a) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or~~
- ~~— (b) an application to subscribe for or purchase units or derivatives of units in a business trust is accepted, or units or derivatives of units in a business trust are allotted, issued or sold, before a prospectus and, where applicable, profile statement, where applicable, in respect of the units or derivatives of units has been registered by the Authority,~~

~~the person making the offer and every person who is knowingly a party to —~~

- ~~— (i) the issue, circulation or distribution of the prospectus or profile statement;~~
- ~~— (ii) the acceptance of the application to subscribe for or purchase the units or derivatives of units; or~~
- ~~— (iii) the allotment, issue or sale of the units or derivatives of units,~~

~~as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~

~~(23) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide for penalties not exceeding a fine of \$50,000.~~

~~(24) For the purposes of subsections (18)(a) and (19)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~

Lodging supplementary document or replacement document

~~282D.~~ (1) If, after a prospectus or profile statement is registered but before the close of the offer of units or derivatives of units in a business trust, the person making that offer becomes aware of—

- ~~— (a) a false or misleading statement in the prospectus or profile statement;~~
- ~~— (b) an omission from the prospectus of any information that should have been included in it under section 282F, or an omission from the profile statement of any information that should have been included in it under section 282G, as the case may be; or~~
- ~~— (c) a new circumstance that—~~
 - ~~— (i) has arisen since the prospectus or profile statement was lodged with the Authority; and~~
 - ~~— (ii) would have been required by—~~
 - ~~— (A) section 282F to be included in the prospectus; or~~
 - ~~— (B) section 282G to be included in the profile statement,~~
~~if it had arisen before the prospectus or the profile statement, as the case may be, was lodged,~~

~~and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.~~

- ~~(2) At the beginning of a supplementary document, there shall be—~~
 - ~~— (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;~~
 - ~~— (b) an identification of the prospectus or profile statement it supplements;~~
 - ~~— (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and~~
 - ~~— (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.~~
- ~~(3) At the beginning of a replacement document, there shall be—~~
 - ~~— (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and~~
 - ~~— (b) an identification of the prospectus or profile statement it replaces.~~
- ~~(4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.~~
- ~~(5) The person making the offer shall take reasonable steps—~~

- ~~— (a) to inform potential investors of the lodgment of any supplementary or replacement document under subsection (1); and~~
- ~~— (b) to make available to them the supplementary document or replacement document.~~
- ~~(6) For the purposes of the application of this Division to events that occur after the lodgment of the supplementary document —~~
 - ~~— (a) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and~~
 - ~~— (b) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.~~
- ~~(7) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —~~
 - ~~— (a) where the replacement document is a replacement prospectus, the prospectus in relation to the offer shall be taken to be the replacement prospectus; and~~
 - ~~— (b) where the replacement document is a replacement profile statement, the profile statement in relation to the offer shall be taken to be the replacement profile statement.~~
- ~~(8) If a supplementary document or replacement document is lodged with the Authority, the offer shall be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.~~
- ~~(9) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for units or derivatives of units in a business trust, then —~~
 - ~~— (a) where the units or derivatives of units have not been issued to the applicants, the person making the offer —~~
 - ~~— (i) shall —~~
 - ~~— (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; and~~
 - ~~— (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;~~

- ~~— (ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or~~
- ~~— (iii) shall —~~
- ~~— (A) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled; and~~
- ~~— (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the units or derivatives of units in the business trust; or~~
- ~~— (b) where the units or derivatives of units have been issued to the applicants, the person making the offer —~~
- ~~— (i) shall —~~
- ~~— (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those units or derivatives of units in the business trust which they do not wish to retain title in; and~~
- ~~— (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;~~
- ~~— (ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those units or derivatives of units in the business trust which they do not wish to retain title in; or~~
- ~~— (iii) shall —~~
- ~~— (A) treat the issue of the units or derivatives of units in the business trust as void, in which case the issue shall be deemed void; and~~
- ~~— (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the units or derivatives of units.~~
- ~~(10) An applicant who wishes to exercise his option under subsection (9)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days from the receipt of such notification, pay to the applicant all moneys paid by him on~~

account of his application for the units or derivatives of units in the business trust.

- ~~(11) An applicant who wishes to exercise his option under subsection (9)(b)(i) or (ii) to return units or derivatives of units in the business trust issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to be evidence of title to those units or derivatives of units to that person, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by the applicant for the units or derivatives of units in the business trust, and the issue of those units or derivatives of units shall be deemed to be void.~~
- ~~(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase units or derivatives of units in a business trust, then —~~
- ~~— (a) where the units or derivatives of units have not been transferred to the applicants, the person making the offer —~~
 - ~~— (i) shall —~~
 - ~~— (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; and~~
 - ~~— (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;~~
 - ~~— (ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or~~
 - ~~— (iii) shall —~~
 - ~~— (A) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled; and~~
 - ~~— (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the units or derivatives of units in the business trust; or~~
 - ~~— (b) where the units or derivatives of units have been transferred to the applicants, the person making the offer —~~

- ~~—(i) shall—~~
- ~~—(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those units or derivatives of units in the business trust which they do not wish to retain title in; and~~
- ~~—(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;~~
- ~~—(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those units or derivatives of units in the business trust which they do not wish to retain title in; or~~
- ~~—(iii) shall treat the sale of the units or derivatives of units in the business trust as void, in which case the sale shall be deemed void, and shall—~~
- ~~—(A) if documents purporting to evidence title to the units or derivatives of units (referred to in this paragraph as the title documents) have been issued to the applicants—~~
- ~~—(AA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return the title documents to the person making the offer within 14 days from the date of lodgment of the supplementary document or replacement document; and~~
- ~~—(AB) within 7 days from the date of the receipt of the title documents or the date of lodgment of the supplementary document or replacement document, whichever is the later, pay to the applicants all moneys paid by them for the units or derivatives of units; or~~
- ~~—(B) if no title documents have been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the units or derivatives of units.~~
- ~~(13) An applicant who wishes to exercise his option under subsection (12)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days of the receipt of such notification, pay to him all moneys paid by him on account of his application for the units or derivatives of units in the business trust.~~
- ~~(14) An applicant who wishes to exercise his option under subsection (12)(b)(i) or (ii) to return units or derivatives of units in the business trust sold to him shall,~~

~~within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to evidence title to those units or derivatives of units to the person making the offer, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by him for the units or derivatives of units and the sale of those units or derivatives of units shall be deemed to be void.~~

~~(15) Any person who contravenes subsection (9) or (12) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.~~

~~(16) Any person who contravenes any other provision of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~(17) For the purposes of subsection (1)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~

~~Stop order for prospectus and profile statement~~

~~**282E.** (1) If a prospectus has been registered and —~~

~~— (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;~~

~~— (b) there is an omission from the prospectus of any information that is required to be included in it under section 282F;~~

~~— (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or~~

~~— (d) the Authority is of the opinion that it is in the public interest to do so,~~

~~the Authority may, by an order in writing (referred to in this section as a stop order) served on the person making the offer of units or derivatives of units in a business trust to which the prospectus relates, direct that no or no further units or derivatives of units in the business trust be allotted, issued or sold.~~

~~(2) If a profile statement has been registered and —~~

~~— (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;~~

~~— (b) there is an omission from the profile statement of any information that is required to be included in it under section 282G;~~

~~— (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or~~

~~— (d) the Authority is of the opinion that it is in the public interest to do so,~~

~~the Authority may, by an order in writing (referred to in this section as a stop order) served on the person making the offer of the units or derivatives of units in a business trust to which the prospectus or profile statement relates, direct that no or no further units or derivatives of units in the business trust allotted, issued or sold.~~

~~(3) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the units or derivatives of units in a business trust to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on a securities exchange and trading in them has commenced.~~

~~(4) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:~~

~~— (a) the person making the offer (being an entity), the issuer, the trustee manager of the business trust or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;~~

~~— (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;~~

~~— (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer, the trustee manager of the business trust or, in relation to or in respect of the trust property of the business trust.~~

~~(5) Where applications to subscribe for units or derivatives of units in a business trust to which the prospectus or profile statement relates have been made prior to the stop order, then —~~

~~— (a) where the units or derivatives of units have not been issued to the applicants —~~

~~— (i) the applications shall be deemed to have been withdrawn and cancelled; and~~

~~— (ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the units or derivatives of units; or~~

~~— (b) where the units or derivatives of units have been issued to the applicants —~~

~~— (i) the issue of the units or derivatives of units shall be deemed to be void; and~~

~~— (ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the units or derivatives of units.~~

~~(6) Where applications to purchase units or derivatives of units in a business trust to which the prospectus or profile statement relates have been made prior to the stop order, then —~~

- ~~— (a) where the units or derivatives of units have not been transferred to the applicants —~~
- ~~— (i) the applications shall be deemed to have been withdrawn and cancelled; and~~
- ~~— (ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the units or derivatives of units; or~~
- ~~— (b) where the units or derivatives of units have been transferred to the applicants, the sale shall be deemed to be void, and the person making the offer shall —~~
 - ~~(i) if documents purporting to evidence title to the units or derivatives of units have been issued to the applicants —~~
 - ~~— (A) within 7 days from the date of the stop order, inform the applicants to return such documents to the person making the offer within 14 days from that date; and~~
 - ~~— (B) within 7 days from the date of the receipt of those documents or the date of the stop order, whichever is the later, pay to the applicants all moneys paid by them for the units or derivatives of units; or~~
 - ~~— (ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the units or derivatives of units.~~
- ~~(7) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person making the offer directing that no or no further units or derivatives of units in a business trust to which the prospectus or profile statement relates be allotted, issued or sold.~~
- ~~(8) An interim stop order shall, unless revoked by the Authority, be in force —~~
 - ~~— (a) in a case where —~~
 - ~~— (i) it is served during a hearing under subsection (4); or~~
 - ~~— (ii) a hearing under subsection (4) is commenced while it is in force,~~

~~until the Authority makes an order under subsection (1) or (2); and~~

 - ~~— (b) in any other case, for a period of 14 days from the day on which the interim stop order is served.~~
- ~~(9) Subsections (5) and (6) shall not apply where only an interim stop order has been served.~~
- ~~(10) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing~~

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

~~(11) Any person who contravenes subsection (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.~~

~~(12) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~

~~Contents of prospectus~~

~~**282F.** (1) A prospectus for an offer of units or derivatives of units in a business trust shall contain—~~

~~— (a) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and~~

~~— (b) the matters prescribed by the Authority.~~

~~(2) The prospectus shall, with respect to subsection (1)(a), contain such information—~~

~~— (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and~~

~~— (b) only to the extent that a person whose knowledge is relevant—~~

~~— (i) actually knows the information; or~~

~~— (ii) in the circumstances ought reasonably to have obtained the information by making enquiries.~~

~~(3) The matters referred to in subsection (1)(a) shall relate to—~~

~~— (a) the rights and liabilities attaching to the units or derivatives of units in the business trust;~~

~~— (b) where the person making the offer of units or derivatives of units in the business trust is the trustee manager of the business trust or the trustee manager of the business trust is controlled by—~~

~~— (i) the person making the offer;~~

~~— (ii) one or more of the related parties of the person making the offer; or~~

~~— (iii) the person making the offer and one or more of his related parties;~~

~~the assets and liabilities, profits and losses and financial position and performance of the business trust and of the trustee manager, and the prospects of the business trust;~~

~~— (c) where derivatives of units in the business trust are issued by an entity other than the trustee manager of the business trust and the person making the offer is that entity or that entity is controlled by —~~

~~— (i) the person making the offer;~~

~~— (ii) one or more of the related parties of the person making the offer; or~~

~~— (iii) the person making the offer and one or more of his related parties,~~

~~the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; and~~

~~— (d) in the case of an offer of derivatives of units in the business trust, where the person making the offer, or an entity which is controlled by —~~

~~— (i) the person making the offer;~~

~~— (ii) one or more of the related parties of the person making the offer; or~~

~~— (iii) the person making the offer and one or more of his related parties,~~

~~is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units, the capacity of that person or entity to issue or deliver the relevant units or derivatives of units in that business trust, or the ability of that person or entity to meet those financial or contractual obligations.~~

~~(4) In deciding what information shall be included under subsection (1)(a), regard shall be had to —~~

~~— (a) the nature of the units or derivatives of units in the business trust and the nature of the business trust concerned;~~

~~— (b) the matters that likely investors may reasonably be expected to know; and~~

~~— (c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.~~

~~(5) For the purposes of subsection (2)(b), a person's knowledge is relevant only if he is one of the following persons:~~

~~— (a) the person making the offer;~~

~~— (b) if the person making the offer is an entity, a director or equivalent person of the entity;~~

~~— (c) the issuer;~~

~~— (d) a director or equivalent person, or a proposed director or equivalent person, of the issuer;~~

~~— (e) a person named in the prospectus with his consent as an underwriter to the issue or sale;~~

- ~~—— (f) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;~~
 - ~~—— (g) a person named in the prospectus with his consent as having made a statement——~~
 - ~~—— (i) that is included in the prospectus; or~~
 - ~~—— (ii) on which a statement made in the prospectus is based;~~
 - ~~—— (h) a person named in the prospectus with his consent as having performed a particular professional or advisory function.~~
- ~~(6) A condition requiring or binding an applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.~~
- ~~(7) This section does not affect any liability that a person has under any other law.~~
- ~~(8) In subsection (3)(b), “assets and liabilities, profits and losses, financial position and performance, and prospects”, in relation to a business trust, means——~~
- ~~—— (a) the assets and liabilities, profits and losses, financial position and performance of that business trust derived from the accounting records and other records kept by the trustee manager of that business trust; and~~
 - ~~—— (b) the business and financial prospects anticipated with respect to the operations of the trustee manager of the business trust in its capacity as trustee manager of the business trust.~~

~~Contents of profile statement~~

- ~~**282G.** (1) A profile statement for an offer of units or derivatives of units in a business trust shall contain——~~
- ~~—— (a) the following particulars:~~
 - ~~—— (i) identification of the business trust, the trustee manager of the business trust, the person making the offer and the issuer;~~
 - ~~—— (ii) identification of the persons signing the profile statement;~~
 - ~~—— (iii) the nature of the units or derivatives of units;~~
 - ~~—— (iv) the nature of the risks involved in investing in the units or derivatives of units; and~~
 - ~~—— (v) details of all amounts payable in respect of the units or derivatives of units (including any amount by way of fee, commission or charge);~~
- ~~—— (b) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and~~

~~— (c) a statement that the persons referred to in section 282C(5) who have signed the profile statement are satisfied that the profile statement contains a fair summary of the key information in the prospectus.~~

~~(2) A profile statement shall not contain—~~

~~— (a) any statement that is false or misleading in the form and context in which it is included;~~

~~— (b) any material information that is not contained in the prospectus; and~~

~~— (c) any material information that differs in any material particular from that set out in the prospectus.~~

~~(3) For the purposes of subsection (2)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~

~~Exemption from requirements as to form or content of prospectus or profile statement~~

~~**282H.** (1) The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.~~

~~(2) The Authority shall not grant an exemption under subsection (1) unless it is of the opinion that—~~

~~— (a) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or~~

~~— (b) it would not be prejudicial to the public interest if the requirement in respect of which the exemption has been applied for were dispensed with.~~

~~(3) The Authority may exempt any class of persons or any class or description of prospectuses or profile statements, from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.~~

~~(4) Any person who contravenes any of the conditions or restrictions imposed under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~Expert's consent to issue of prospectus or profile statement containing statement by him~~

~~**282I.** (1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement which includes a statement purporting to be made by, or based on a statement~~

~~made by, an expert, the prospectus or profile statement shall not be issued unless—~~

- ~~— (a) the expert has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and~~
- ~~— (b) there appears in the prospectus or profile statement, as the case may be, a statement that the expert has given and has not withdrawn his consent.~~
- ~~(2) Every person making the offer shall cause a true copy of every written consent referred to in subsection (1) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if the issuer has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.~~
- ~~(3) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the units or derivatives of units in the business trust to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (2) for a period of at least 6 months after the registration of the prospectus or profile statement.~~
- ~~(4) If any prospectus or profile statement is issued in contravention of subsection (1), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~
- ~~(5) The Authority may exempt any person or class of persons, or any prospectus or profile statement or class or description of prospectuses or profile statements, from this section, subject to such conditions or restrictions as may be determined by the Authority.~~
- ~~(6) Any person who contravenes any of the conditions or restrictions imposed under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~Consent of issue manager and underwriter to being named in prospectus or profile statement~~

~~**282J.** (1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement in which~~

~~a person is named as the issue manager to the offer, the prospectus or profile statement shall not be issued unless—~~

- ~~— (a) the person has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to being named in the prospectus or profile statement as issue manager to that offer; and~~
 - ~~— (b) there appears in the prospectus or profile statement, as the case may be, a statement that the person has given and has not withdrawn his consent.~~
- ~~(2) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement in which a person is named as the underwriter (but not a sub-underwriter) to the offer, the prospectus or profile statement shall not be issued—~~
- ~~— (a) the person has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to being named in the prospectus or profile statement as underwriter to that offer; and~~
 - ~~— (b) there appears in the prospectus or profile statement, as the case may be, a statement that the person has given and has not withdrawn such consent.~~
- ~~(3) If any prospectus or profile statement is issued in contravention of subsection (1) or (2), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~
- ~~(4) Every person making the offer shall cause a true copy of every written consent referred to in subsections (1) and (2) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.~~
- ~~(5) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the units or derivatives of units in the business trust to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (4) for a period of at least 6 months after the registration of the prospectus or profile statement.~~

Duration of validity of prospectus and profile statement

~~282K. (1) No person shall make an offer of units or derivatives of units in a business trust, or allot, issue or sell any units or derivatives of units in a business trust, on the basis of a prospectus or profile statement after the expiration of a period of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.~~

~~(2) In a case where an entity makes an offer of units or derivatives of units in a business trust or where the units or derivatives of units in a business trust being offered are those issued by an entity or a proposed entity, no officer or equivalent person or promoter of the entity or proposed entity shall authorise or permit —~~

~~—— (a) the offer of those units or derivatives of units; or~~

~~—— (b) the allotment, issue or sale of those units or derivatives of units,~~

~~on the basis of a prospectus or profile statement after the expiration of a period of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.~~

~~(3) If default is made in complying with subsection (1) or (2), the person and, in the case of an entity or proposed entity, every officer or equivalent person or promoter of the entity or proposed entity shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~(4) An allotment, an issue or a sale of units or derivatives of units in a business trust that is made in contravention of subsection (1) or (2) shall not, by reason only of that fact, be voidable or void.~~

~~Restrictions on advertisements, etc.~~

~~282L. (1) If a prospectus is required for an offer or intended offer of units or derivatives of units in a business trust, a person shall not —~~

~~—— (a) advertise the offer or intended offer; or~~

~~—— (b) publish a statement that —~~

~~—— (i) directly or indirectly refers to the offer or intended offer; or~~

~~—— (ii) is reasonably likely to induce persons to subscribe for or purchase the units or derivatives of units,~~

~~unless the advertisement or publication is authorised by this section.~~

~~(2) In determining whether a statement —~~

~~—— (a) indirectly refers to an offer or intended offer of units or derivatives of units in a business trust; or~~

~~— (b) is reasonably likely to induce persons to subscribe for or purchase units or derivatives of units in a business trust,~~

~~regard shall be had to whether the statement —~~

~~— (i) forms part of —~~

~~— (A) the normal advertising by a trustee manager of a business trust on behalf of the business trust in respect of the products or services offered by the trustee manager on behalf of the business trust, and is genuinely directed at maintaining existing customers, or attracting new customers, for those products or services; or~~

~~— (B) the normal advertising of an entity's products or services, and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services;~~

~~— (ii) communicates information that materially deals with the affairs of the business trust or the entity; and~~

~~— (iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.~~

~~(3) Notwithstanding subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 282Z(3) or persons to whom an offer referred to in section 282Z(2) is to be made without contravening subsection (1), if —~~

~~— (a) the front page of the preliminary document contains —~~

~~— (i) the following statement:~~

~~“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.”;~~

~~— (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and~~

~~— (iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the preliminary document to purchase or subscribe for any units or derivatives of units in the business trust to which the preliminary document relates;~~

~~— (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the units or derivatives of units in the business trust to which the preliminary document relates, or the acceptance of such an offer by any person; and~~

~~— (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary~~

~~document was issued that the registered prospectus is available for collection.~~

- ~~(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting oral or written material, on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 282Z(3) or persons to whom an offer referred to in section 282Z(2) is to be made before a prospectus or profile statement is registered by the Authority.~~
- ~~(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 282C without contravening subsection (1).~~
- ~~(6) Before a prospectus or profile statement is registered, an advertisement or a publication does not contravene subsection (1) if it contains only the following:~~
- ~~— (a) a statement that identifies the units or derivatives of units in the business trust, the person making the offer, the issuer, the business trust and the trustee manager of the business trust;~~
 - ~~— (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;~~
 - ~~— (c) a statement that anyone wishing to acquire the units or derivatives of units in the business trust will need to make an application in the manner set out in the prospectus or profile statement; and~~
 - ~~— (d) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.~~
- ~~(7) To satisfy subsection (6), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the statement referred to in paragraph (d).~~
- ~~(8) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if —~~
- ~~— (a) it includes a statement that the prospectus or profile statement in respect of the offer of units or derivatives of units in the business trust is available for collection at the times and places specified in the statement;~~
 - ~~— (b) it includes a statement that anyone wishing to acquire the units or derivatives of units in the business trust will need to make an application in the manner set out in the prospectus or profile statement; and~~
 - ~~— (c) it does not contain any information that is not included in the prospectus or profile statement.~~
- ~~(9) An advertisement or a publication does not contravene subsection (1) if it —~~

- ~~— (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange made by any person;~~
- ~~— (b) consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee-manager of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;~~
- ~~— (c) consists solely of a report about the issuer or the business trust whose units or derivatives of units are the subject of the offer or intended offer that is published by the person making the offer, the issuer or the trustee manager of the business trust, which —~~
 - ~~— (i) does not contain information that materially affects the affairs of the issuer or the business trust other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a disclosure, notice or report referred to in paragraph (a) or (b); and~~
 - ~~— (ii) does not refer (directly or indirectly) to the offer or intended offer;~~
- ~~— (d) consists solely of a statement made by the person making the offer, the issuer or the trustee manager of the business trust that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;~~
- ~~— (e) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (f)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio, television or any other means of broadcasting or communication, relating to —~~
 - ~~— (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;~~
 - ~~— (ii) a disclosure, notice or report referred to in paragraph (a);~~
 - ~~— (iii) a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (b);~~
 - ~~— (iv) a report referred to in paragraph (c);~~
- ~~— (f) is a report about the units or derivatives of units in a business trust which are the subject of the offer or intended offer, published by someone who is not —~~
 - ~~— (i) the person making the offer, the issuer or the trustee manager of the business trust;~~
 - ~~— (ii) a director or equivalent person of the person making the offer, the issuer or the trustee manager of the business trust;~~

- ~~— (iii) a person who has an interest in the success of the issue or sale of the units or derivatives of units in the business trust; or~~
- ~~— (iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);~~
- ~~— (g) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or~~
- ~~— (h) is a publication made by the person making the offer, the issuer or the trustee manager of the business trust solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in—~~
- ~~— (i) an earlier news report or a genuine comment referred to in paragraph (e); or~~
- ~~— (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (10),~~

~~provided that the first mentioned publication does not contain any material information that is not included in the prospectus.~~

~~(10) A person does not contravene subsection (1) if—~~

- ~~— (a) he publishes any advertisement or publication in the ordinary course of a business of—~~
- ~~— (i) publishing a newspaper, periodical or magazine; or~~
- ~~— (ii) broadcasting by radio, television or any other means of broadcasting or communication; and~~
- ~~— (b) he did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).~~

~~(11) Subsection (9)(e) and (f) shall not apply to an advertisement or a statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.~~

~~(12) Any person who contravenes subsection (1) or who knowingly authorised or permitted the publication or dissemination in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~(13) This section does not affect any liability that a person has under any other law.~~

~~(14) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as may be determined by the Authority.~~

~~(15) Any person who contravenes any of the conditions or restrictions imposed under subsection (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~(16) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.~~

~~(17) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~

~~(18) For the purposes of subsection (2)(ii), the reference to affairs of the business trust or the entity shall —~~

~~— (a) in the case of the business trust, be construed to refer to such matters as may be prescribed by the Authority;~~

~~— (b) in the case where the entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and~~

~~— (c) in the case where the entity is not a corporation, be construed to refer to such matters as may be prescribed by the Authority.~~

~~(19) For the purposes of subsection (9)(c)(i), the reference to affairs of the issuer or the business trust shall —~~

~~— (a) in the case where the issuer is a corporation, be construed as including a reference to the matters referred to in section 2(2);~~

~~— (b) in the case where the issuer is not a corporation, be construed to refer to such matters as may be prescribed by the Authority; and~~

~~— (c) in the case of the business trust, be construed to refer to such matters as may be prescribed by the Authority.~~

~~Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies~~

~~**282M.** (1) A person referred to in section 282O(3) (other than paragraph (a)) shall notify in writing the person making the offer of units or derivatives of units in a business trust, as soon as practicable, if he becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer that —~~

~~— (a) a statement in the prospectus or the profile statement is false or misleading;~~

~~— (b) there is an omission to state any information required to be included in the prospectus under section 282F or there is an omission to state any information required to be included in the profile statement under section 282G, as the case may be; or~~

~~— (c) a new circumstance —~~

~~— (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and~~

~~— (ii) would have been required to be included in the prospectus under section 282F, or required to be included in the profile statement under section 282G, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,~~

~~and the failure to so notify would have been materially adverse from the point of view of an investor.~~

~~(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.~~

~~(3) For the purposes of subsection (1)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~

~~Criminal liability for false or misleading statements~~

~~**282N.** (1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 282ZC, where a prospectus or profile statement is prepared and issued in relation to the offer, and —~~

~~— (a) a false or misleading statement is contained in —~~

~~— (i) the prospectus or the profile statement; or~~

~~— (ii) any application form for the units or derivatives of units;~~

~~— (b) there is an omission to state any information required to be included in the prospectus under section 282F or there is an omission to state any information required to be included in the profile statement under section 282G, as the case may be; or~~

~~— (c) there is an omission to state a new circumstance that —~~

~~— (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and~~

~~— (ii) would have been required to be included in the prospectus under section 282F, or required to be included in the profile statement under section 282G, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,~~

~~the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on~~

~~conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~

~~(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.~~

~~(3) A person shall not be taken to have contravened subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.~~

~~(4) The persons guilty of the offence are—~~

~~— (a) the person making the offer;~~

~~— (b) where the person making the offer is an entity—~~

~~— (i) each director or equivalent person of the entity; and~~

~~— (ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;~~

~~— (c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of his related parties—~~

~~— (i) the issuer;~~

~~— (ii) each director or equivalent person of the issuer; and~~

~~— (iii) each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the issuer;~~

~~— (d) an issue manager to the offer of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or profile statement, if—~~

~~— (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;~~

~~— (ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or~~

~~— (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;~~

- ~~—— (e) an underwriter (but not a sub-underwriter) to the issue or sale of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or profile statement, if ——~~
 - ~~—— (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;~~
 - ~~—— (ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or~~
 - ~~—— (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;~~
 - ~~—— (f) a person named in the prospectus or the profile statement with his consent as having made ——~~
 - ~~—— (i) the statement that is false or misleading, if he intentionally or recklessly makes that statement; or~~
 - ~~—— (ii) a statement on which the false or misleading statement is based, if he knows that the second mentioned statement is false or misleading and fails to take immediate steps to withdraw his consent,~~
- ~~but only in respect of the inclusion of the false or misleading statement; and~~
- ~~—— (g) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.~~

~~(5) For the purposes of subsection (4) and this subsection ——~~

- ~~—— (a) remedial action includes any of the following:~~
- ~~—— (i) preventing the statement from being included, or having the information or circumstance included, in the prospectus or profile statement, as the case may be;~~
- ~~—— (ii) procuring the lodgment of a supplementary or replacement prospectus under section 282D; and~~
- ~~—— (b) a person is reckless as to the matter referred to in subsection (4)(d)(iii) or (e)(iii) if, having been put upon inquiry that the statement to be, or which has been, included in the prospectus or profile statement is likely to be false or misleading, that the information or circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, he fails to ——~~
- ~~—— (i) make all inquiries as are reasonable in the circumstances to verify this; and~~

~~—— (ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted by the outcome of the inquiries.~~

~~(6) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~

~~Civil liability for false or misleading statements~~

~~**282O.** (1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 282ZC, where a prospectus or profile statement is prepared and issued in relation to the offer, and ——~~

~~—— (a) a false or misleading statement is contained in ——~~

~~—— (i) the prospectus or the profile statement; or~~

~~—— (ii) any application form for the units or derivatives of units;~~

~~—— (b) there is an omission to state any information required to be included in the prospectus under section 282F or there is an omission to state any information required to be included in the profile statement under section 282G, as the case may be; or~~

~~—— (c) there is an omission to state a new circumstance that ——~~

~~—— (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and~~

~~—— (ii) would have been required to be included in the prospectus under section 282F, or required to be included in the profile statement under section 282G, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,~~

~~the persons referred to in subsection (3) shall be liable to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission.~~

~~(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.~~

~~(3) The persons liable are ——~~

~~—— (a) the person making the offer;~~

~~—— (b) where the person making the offer is an entity ——~~

~~—— (i) each director or equivalent person of the entity; and~~

- ~~—— (ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;~~
 - ~~—— (c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of his related parties ——~~
 - ~~—— (i) the issuer;~~
 - ~~—— (ii) each director or equivalent person of the issuer; and~~
 - ~~—— (iii) each person who is, and who has consented to be, named in the prospectus or the profile statement as a proposed director or an equivalent person of the issuer;~~
 - ~~—— (d) an issue manager to the offer of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or the profile statement;~~
 - ~~—— (e) an underwriter (but not a sub underwriter) to the issue or sale of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or the profile statement;~~
 - ~~—— (f) a person named in the prospectus or the profile statement with his consent as having made a statement ——~~
 - ~~—— (i) that is included in the prospectus or the profile statement; or~~
 - ~~—— (ii) on which a statement made in the prospectus or the profile statement is based,~~
- ~~but only in respect of the inclusion of that statement; and~~
- ~~—— (g) any other person who made the false or misleading statement or omitted to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance.~~
- ~~(4) A person who acquires units or derivatives of units in a business trust as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the units or derivatives of units in reliance on both the profile statement and the prospectus for the offer.~~
- ~~(5) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~
- ~~(6) No action under subsection (1) shall be commenced after the expiration of 6 years from the date on which the cause of action arose.~~
- ~~(7) This section shall not affect any liability that a person has under any other law.~~

Defences

~~282P. (1) A person referred to in section 282N(4)(a), (b) or (c) is not liable under section 282N(1), and a person referred to in section 282O(3) is not liable under section 282O(1), only because of a false or misleading statement in a prospectus or a profile statement if the person proves that he —~~

~~—— (a) made all inquiries (if any) that were reasonable in the circumstances; and~~

~~—— (b) after doing so, believed on reasonable grounds that the statement was not false or misleading.~~

~~(2) A person referred to in section 282N(4)(a), (b) or (c) is not liable under section 282N(1), and a person referred to in section 282O(3) is not liable under section 282O(1), only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that he —~~

~~—— (a) made all inquiries (if any) that were reasonable in the circumstances; and~~

~~—— (b) after doing so, believed on reasonable grounds that there was no omission from the prospectus or profile statement in relation to that matter.~~

~~(3) A person is not liable under section 282N(1) or 282O(1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that he placed reasonable reliance on information given to him by —~~

~~—— (a) if the person is an entity, someone other than —~~

~~—— (i) a director or equivalent person; or~~

~~—— (ii) an employee or agent,~~

~~of the entity; or~~

~~—— (b) if the person is an individual, someone other than an employee or agent of the individual.~~

~~(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because he performs a particular professional or advisory function for the entity or individual.~~

~~(5) A person who is named in a prospectus or a profile statement as —~~

~~—— (a) a proposed director or equivalent person of the issuer, or an issue manager or underwriter;~~

~~—— (b) having made a statement included in the prospectus or the profile statement; or~~

~~—— (c) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,~~

~~is not liable under section 282N(1) or 282O(1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that he publicly withdrew his consent to being named in the prospectus or the profile statement in that way.~~

~~(6) A person is not liable under section 282N(1) or 282O(1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that he was not aware of the matter.~~

~~(7) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.~~

~~Document containing offer of units or derivatives of units for sale deemed prospectus~~

~~**282Q.** (1) Subsection (2) applies where—~~

~~— (a) an entity allots or agrees to allot to any person any units or derivatives of units in a business trust with a view to all or any of them being subsequently offered for sale to another person; and~~

~~— (b) such offer (referred to in this section as a subsequent offer) does not qualify for an exemption under Subdivision (3) of this Division (other than section 282ZC).~~

~~(2) Any document by which the subsequent offer is made shall for all purposes be deemed to be a prospectus issued by the entity, and the entity shall for all purposes be deemed to be the person making the offer, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non disclosure in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if—~~

~~— (a) an offer of units or derivatives of units in the business trust has been made; and~~

~~— (b) persons accepting the subsequent offer in respect of any units or derivatives of units in the business trust were subscribers therefor,~~

~~but without prejudice to the liability, if any, of the persons making the subsequent offer, in respect of statements or non disclosures in the document or otherwise.~~

~~(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, units or derivatives of units in a business trust was made with a view to the units or derivatives of units being subsequently offered for sale if it is shown—~~

- ~~—— (a) that an offer of the units or derivatives of units or of any of them for sale was made within 6 months after the allotment or agreement to allot; or~~
- ~~—— (b) that at the date when the offer was made the whole consideration to be received by the entity in respect of the units or derivatives of units had not been so received.~~
- ~~(4) The requirements of this Division as to prospectuses shall have effect as though the persons making the subsequent offer were persons named in the prospectus as directors or equivalent persons of the entity.~~
- ~~(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer shall state——~~
 - ~~—— (a) the net amount of the consideration received or to be received by the entity in respect of the units or derivatives of units in the business trust being offered; and~~
 - ~~—— (b) the place and time at which a copy of the contract under which the units or derivatives of units in the business trust have been or are to be allotted may be inspected.~~

~~Application and moneys to be held in trust in separate bank account until allotment~~

~~**282R.** (1) All application and other moneys paid prior to allotment by any applicant on account of units or derivatives of units in a business trust offered to him shall, until the allotment of the units or derivatives of units in the business trust, be held by the person making the offer of the units or derivatives of units upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those units or derivatives of units.~~

~~(2) There shall be no obligation or duty on any bank with which any such moneys have been deposited to enquire into or see to the proper application of those moneys, so long as the bank acts in good faith.~~

~~(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~Allotment of units or derivatives of units where prospectus indicates application to list on securities exchange~~

~~**282S.** (1) Where a prospectus states or implies that application has been or will be made for permission for the units or derivatives of units in a~~

~~business trust offered thereby to be listed for quotation on any securities exchange, and—~~

~~—(a) the permission is not applied for in the form required by the securities exchange within 3 days from the date of the issue of the prospectus; or~~

~~—(b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the securities exchange,~~

~~then—~~

~~—(i) any allotment whenever made of units or derivatives of units made on an application in pursuance of the prospectus shall, subject to subsection (3), be void; and~~

~~—(ii) any person who continues to allot such units or derivatives of units after the period specified in paragraph (a) or (b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~

~~(2) Where, the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer shall, subject to subsection (3), immediately repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such moneys is not repaid within 14 days after the person making the offer so becomes liable to repay them, then—~~

~~—(a) he shall be liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days; and~~

~~—(b) where the person making the offer is an entity, in addition to the liability of the entity, the directors or equivalent persons of the entity shall be jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.~~

~~(3) Where in relation to any units or derivatives of units in a business trust—~~

~~—(a) permission is not applied for as specified in subsection (1)(a); or~~

~~—(b) permission is not granted as specified in subsection (1)(b),~~

~~the Authority may, on the application of the issuer made before any of the units or derivatives of units is purported to be allotted, exempt the allotment of the units or derivatives of units from the provisions of this section, and the Authority shall give notice of such exemption in the *Gazette*.~~

~~(4) A director or equivalent person shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.~~

- ~~(5) Any condition requiring or binding any applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section or purporting to do so shall be void.~~
- ~~(6) Without limiting the application of any of its provisions, this section shall have effect—~~
- ~~—— (a) in relation to any units or derivatives of units in a business trust agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and~~
- ~~—— (b) in relation to a prospectus offering units or derivatives of units in a business trust for sale as if a reference to sale were substituted for a reference to allotment.~~
- ~~(7) All moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).~~
- ~~(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~
- ~~(9) Where the securities exchange has within the time specified in subsection (1)(b) granted permission subject to compliance with any requirements specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if the directors or equivalent persons of the issuer have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.~~
- ~~(10) If any such undertaking referred to in subsection (9) is not complied with, each director or equivalent person who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~
- ~~(11) A person shall not issue a prospectus inviting persons to subscribe for units or derivatives of units in a business trust if it includes—~~
- ~~—— (a) a false or misleading statement that permission has been granted for those units or derivatives of units to be listed for quotation on, dealt in or quoted on any securities exchange; or~~
- ~~—— (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation, dealing in or quoting the units or derivatives of~~

~~units, on any securities exchange, or to any requirement of a securities exchange, unless—~~

~~——(i) that statement is or is to the effect that permission has been granted, or that application has been or will be made to the securities exchange within 3 days from the date of the issue of the prospectus; or~~

~~——(ii) that statement has been approved by the Authority for inclusion in the prospectus.~~

~~(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~(13) Where a prospectus contains a statement to the effect that the trust deed of a business trust or the memorandum and articles or other constituent document or documents of the issuer comply, or have been drawn so as to comply, with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the units or derivatives of units in the business trust to which the prospectus relates to be listed for quotation on the securities exchange.~~

~~Prohibition of allotment unless minimum subscription received~~

~~**282T.** (1) No allotment shall be made of any units or derivatives of units in a business trust unless—~~

~~——(a) the minimum subscription has been subscribed; and~~

~~——(b) the sum payable on application for the units or derivatives of units so subscribed has been received by the trustee manager of the business trust,~~

~~but if a cheque for the sum payable has been received by the trustee manager, the sum shall be deemed not to have been received by the trustee manager until the cheque is paid by the bank on which it is drawn.~~

~~(2) The minimum subscription shall—~~

~~——(a) be calculated based on the price at which each unit or derivative of a unit is offered or will be offered; and~~

~~——(b) be reckoned exclusively of any amount payable otherwise than in cash.~~

~~(3) The amount payable on application for each unit or derivative of a unit offered shall not be less than 5% of the price at which the unit or derivative of a unit is or will be offered.~~

~~(4) If the conditions referred to in subsection (1)(a) and (b) have not been satisfied on the expiration of 4 months after the first issue of the~~

prospectus, all moneys received from applicants for units or derivatives of units in the business trust shall be immediately repaid to them without interest.

- (5) If any money referred to in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the trustee manager of the business trust shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months; but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (6) An allotment made by the trustee manager of a business trust of any units or derivatives of units in the business trust to an applicant in contravention of this section shall be voidable at the option of the applicant, whose option may be exercised by written notice served on the trustee manager of the business trust within one month after the date of the allotment and not later, and the allotment shall be so voidable notwithstanding that the business trust is in the course of being wound up.
- (7) The trustee manager of a business trust which contravenes any of the provisions of this section, and every director of a trustee manager who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section, shall be guilty of an offence and shall be liable in addition to the penalty or punishment for the offence to pay into the trust property of the business trust and compensate the allottee respectively for any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) or the allottee has sustained or incurred thereby.
- (8) No proceedings for the recovery of any compensation under subsection (7) shall be commenced after the expiration of 2 years from the date of the allotment.
- (9) Any condition requiring or binding any applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section shall be void.

Subdivision (2A) — Recognised business trusts

Power of Authority to recognise business trusts constituted outside Singapore

282TA. (1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2), recognise a business trust constituted outside Singapore.

(2) The Authority may recognise a business trust under subsection (1) if and only if the Authority is satisfied that —

- (a) the laws and practices of the jurisdiction under which the business trust is constituted and regulated affords to investors in Singapore protection

at least equivalent to that provided to them under the Business Trusts Act (Cap. 31A) in the case of registered business trusts;

- ~~— (b) the business trust satisfies such criteria as may be prescribed by the Authority; and~~
 - ~~— (c) the person making the offer of, or the issuer of, units or derivatives of units in the business trust, or the trustee manager of the business trust satisfies such criteria as may be prescribed by the Authority.~~
- ~~(3) Without prejudice to subsection (2), in considering whether to recognise a business trust under subsection (1), the Authority may have regard to such other factors as may be prescribed.~~
- ~~(4) Without prejudice to subsection (2), the Authority may refuse to recognise any business trust where it appears to the Authority that it is not in the public interest to do so.~~
- ~~(5) The Authority shall not refuse to recognise a business trust under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the business trust on the basis of any of the following circumstances:~~
- ~~— (a) the person making the offer (being an entity), the issuer or the trustee manager or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;~~
 - ~~— (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;~~
 - ~~— (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee manager of the business trust, or in relation to or in respect of the trust property of the business trust.~~
- ~~(6) Any person making an application under subsection (1) may, within 30 days after he is notified that the Authority has refused to recognise that business trust constituted outside Singapore under subsection (1), appeal to the Minister whose decision shall be final.~~
- ~~(7) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.~~
- ~~(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any business trust that is recognised under subsection (1).~~
- ~~(9) While a business trust remains a recognised business trust, a person making an offer of, or an issuer of, units or derivatives of units in the trust, or the trustee manager of the trust shall ensure that the criteria prescribed~~

by the Authority in accordance with subsection (2)(b) and (c) which are applicable to him continue to be satisfied.

~~(10) The trustee manager of a recognised business trust shall furnish such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.~~

~~(11) Any person who contravenes subsection (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.~~

~~Power of Authority to impose conditions or restrictions~~

~~**282TB.** (1) The Authority may recognise a business trust under section 282TA(1) subject to such conditions or restrictions as it thinks fit to impose for the purpose of protection of investors, and the trustee manager of the trust and a person making an offer of, or an issuer of, units or derivatives of units in the trust shall comply with the conditions or restrictions applicable to him.~~

~~(2) The Authority may, at any time, by notice in writing to any of the persons referred to in subsection (1), vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.~~

~~(3) Any person who contravenes any condition or restriction applicable to him under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.~~

~~Revocation, suspension or withdrawal of recognition~~

~~**282TC.** (1) The Authority may revoke the recognition of a recognised business trust granted under section 282TA(1) if—~~

~~— (a) the application for recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the recognition;~~

~~— (b) the Authority is of the opinion that the continued recognition of the business trust is or will be against the public interest;~~

~~— (c) the Authority is of the opinion that the continued recognition of the business trust is or will be prejudicial to its unitholders or potential unitholders; or~~

- ~~— (a) there has been a contravention of section 282TA(9) or (10) or a condition or restriction referred to in section 282TB.~~
- ~~(2) Where the Authority revokes the recognition of a recognised business trust under subsection (1), the Authority may issue such directions as it deems fit to a person making an offer of, or the issuer of, units or derivatives of units in the trust, or the trustee manager of the trust, including a direction that he provides the holders of the units or derivatives of units with an option to redeem or sell back to him their units or derivatives of units, as the case may be, on such terms as the Authority may approve; and the person to whom the directions are issued shall comply with them.~~
- ~~(3) In determining whether to issue a direction under subsection (2), the Authority shall consider —~~
- ~~— (a) whether the trustee manager is able to liquidate the property of the trust without material adverse financial effect to the unitholders, and for this purpose, the factors which the Authority may take into account include —~~
- ~~— (i) the liquidity of the property of the trust;~~
- ~~— (ii) the penalties, if any, payable for liquidating the property; and~~
- ~~— (iii) in a case where the units of the trust are also listed for quotation or quoted on an overseas securities exchange, the potential impact which the liquidation may have on unitholders in the country or territory where they are listed; and~~
- ~~— (b) where the units or derivatives of units of the trust are listed for quotation on the official list of a securities exchange, whether the holders of the units or derivatives of units are afforded an opportunity to liquidate, sell or redeem their units or derivatives of units on reasonable terms in accordance with the requirements of the listing rules of the securities exchange.~~
- ~~(4) A person who without reasonable excuse contravenes any of the directions issued by the Authority to him under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.~~
- ~~(5) Notwithstanding subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the recognition of a recognised business trust, suspend the recognition of that recognised business trust for a specific period, and may at any time remove such suspension.~~
- ~~(6) Where the Authority revokes the recognition of a recognised business trust under subsection (1) or suspends the recognition of a recognised business trust under subsection (5), it shall notify the trustee manager~~

of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 282TA(1).

~~(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the trustee manager of the business trust or the person who made the application to the Authority for recognition of a business trust under section 282TA(1), in such form and manner as may be prescribed, withdraw the recognition of that recognised business trust.~~

~~(8) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (7) where the Authority is of the opinion that—~~

~~— (a) there is any matter concerning the recognised business trust which should be investigated before the recognition is withdrawn; or~~

~~— (b) the withdrawal of the recognition would not be in the public interest.~~

~~(9) The Authority shall not—~~

~~— (a) revoke the recognition of a recognised business trust under subsection (1);~~

~~— (b) impose a direction under subsection (2);~~

~~— (c) suspend the recognition of a recognised business trust under subsection (5); or~~

~~— (d) refuse the withdrawal of the recognition of a recognised business trust under subsection (8),~~

~~without giving the person referred to in subsection (2), (6) or (7), as the case may be, an opportunity to be heard, except that an opportunity to be heard need not be given for a revocation or suspension on the ground that the continued recognition of the recognised business trust is against the public interest on the basis of any of the following circumstances:~~

~~— (i) the person making the offer (being an entity), the issuer, the trustee manager of the recognised business trust or the recognised business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;~~

~~— (ii) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;~~

~~— (iii) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee manager, or in relation to the trust property of the recognised business trust.~~

~~(10) The person referred to in subsection (2), (6) or (7), as the case may be, may, within 30 days after he is notified that the Authority—~~

- ~~—— (a) has revoked the recognition of that recognised business trust under subsection (1);~~
- ~~—— (b) has imposed a direction on him under subsection (2);~~
- ~~—— (c) has suspended the recognition of that recognised business trust under subsection (5); or~~
- ~~—— (d) has refused to withdraw the recognition of that recognised business trust under subsection (8);~~

~~appeal to the Minister whose decision shall be final.~~

~~(11) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (5) or withdraws a recognition under subsection (8), it may ——~~

- ~~—— (a) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and~~
- ~~—— (b) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.~~

~~Subdivision (3) — Exemptions~~

~~Issue or transfer of units or derivatives of units for no consideration~~

~~**282U.** (1) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units in a business trust if no consideration is or will be given for the issue or transfer of the units.~~

~~(2) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of derivatives of units in a business trust if ——~~

- ~~—— (a) no consideration is or will be given for the issue or transfer of the derivatives of units; and~~
- ~~—— (b) no consideration is or will be given for the units in the business trust on the exercise or conversion of the derivatives of units.~~

~~Small offers~~

~~**282V.** (1) Subdivision (2) of this Division (other than section 282Q) shall not apply to personal offers of units or derivatives of units in a business trust by a person if ——~~

- ~~—— (a) the total amount raised by the person from such offers within any period of 12 months does not exceed ——~~
- ~~—— (i) \$5 million (or its equivalent in a foreign currency); or~~
- ~~—— (ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);~~
- ~~—— (b) in respect of each offer, the person making the offer ——~~
- ~~—— (i) gives the person to whom he makes the offer ——~~

~~— (A) in the case where the business trust is not registered under the Business Trusts Act (Cap. 31A), the following statement in writing:~~

~~“This offer is made in reliance on the exemption under section 282V(1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act.”;~~
~~and~~

~~— (B) in the case where the business trust is registered under the Business Trusts Act, the following statement in writing:~~

~~“This offer is made in reliance on the exemption under section 282V(1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”;~~
~~and~~

~~— (ii) gives the person to whom he makes the offer a notification in writing that the units or derivatives of units to which the offer (referred to in this sub paragraph as the initial offer) relates shall not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —~~

~~— (A) in compliance with Subdivision (2) of this Division;~~

~~— (B) in reliance on subsection (8)(c) or any other exemption under any provision of this Subdivision (other than this subsection); or~~

~~— (C) where at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer, in reliance on the exemption under this subsection;~~

~~— (c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;~~

~~— (d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —~~

~~— (i) the holder of a capital markets services licence to deal in securities;~~

~~— (ii) an exempt person in respect of dealing in securities; or~~

~~— (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing; and~~

~~— (e) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —~~

~~— (i) the prospectus has expired pursuant to section 282K; or~~

~~—— (ii) the person making the offer has before making the offer informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection.~~

~~(2) For the purposes of subsection (1)(b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.~~

~~(3) For the purposes of subsection (1), a personal offer of units or derivatives of units in a business trust is one that —~~

~~—— (a) may be accepted only by the person to whom it is made; and~~

~~—— (b) is made to a person who is likely to be interested in that offer, having regard to —~~

~~—— (i) any previous contact before the date of the offer between the person making the offer and that person;~~

~~—— (ii) any previous professional or other connection established before that date between the person making the offer and that person; or~~

~~—— (iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —~~

~~—— (A) the person making the offer;~~

~~—— (B) the holder of a capital markets services licence to deal in securities;~~

~~—— (C) an exempt person in respect of dealing in securities;~~

~~—— (D) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;~~

~~—— (E) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act; or~~

~~—— (F) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,~~

~~that he is interested in offers of that kind.~~

~~(4) In determining the amount raised by an offer, the following shall be included:~~

~~—— (a) the amount payable for the units or derivatives of units in a business trust at the time they are allotted, issued or sold;~~

~~—— (b) if the units or derivatives of units in a business trust are issued partly-paid, any amount payable at a future time if a call is made;~~

- ~~— (c) if the units or derivatives of units in a business trust carry a right (by whatever name called) to be converted into other units or derivatives of units in the business trust or to acquire other units or derivatives of units in the business trust, any amount payable on the exercise of the right to convert them into, or to acquire, other units or derivatives of units.~~
- ~~(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1)(a), each amount raised —~~
 - ~~— (a) by that person from any offer of units or derivatives of units in a business trust issued by the same entity; or~~
 - ~~— (b) by that person or another person from any offer of securities which is a closely related offer,~~~~if any, within that period in reliance on the exemption under subsection (1), section 272A(1) or 302B(1) shall be included.~~
- ~~(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.~~
- ~~(7) For the purpose of this section, an offer of units or derivatives of units in a business trust made by a person acting as an agent of another person shall be treated as an offer made by that other person.~~
- ~~(8) Where units or derivatives of units in a business trust acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the units or derivatives of units to another person, Subdivision (2) of this Division shall apply to the offer from the first-mentioned person to the second mentioned person which resulted in that sale, unless —~~
 - ~~— (a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);~~
 - ~~— (b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer; or~~
 - ~~— (c) such offer is one —~~
 - ~~— (i) that may be accepted only by the person to whom it is made;~~
 - ~~— (ii) that is made to a person who is likely to be interested in the offer having regard to —~~
 - ~~— (A) any previous contact before the date of the offer between the person making the initial offer and that person;~~
 - ~~— (B) any previous professional or other connection established before that date between the person making the initial offer and that person; or~~

- ~~— (C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —~~
- ~~— (CA) the person making the initial offer;~~
- ~~— (CB) the holder of a capital markets services licence to deal in securities;~~
- ~~— (CC) an exempt person in respect of dealing in securities;~~
- ~~— (CD) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;~~
- ~~— (CE) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act (Cap. 110); or~~
- ~~— (CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services, that he is interested in offers of that kind;~~
- ~~— (iii) in respect of which the first mentioned person has given the second-mentioned person —~~
- ~~— (A) the following statement in writing —~~
- ~~— (AA) in the case where the business trust is not registered under the Business Trusts Act (Cap. 31A) —~~
- ~~“This offer is made in reliance on the exemption under section 282V(8)(c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act.”;~~
~~and~~
- ~~— (AB) in the case where the business trust is registered under the Business Trusts Act —~~
- ~~“This offer is made in reliance on the exemption under section 282V(8)(c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”;~~
~~and~~
- ~~— (B) a notification in writing that the units or derivatives of units being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —~~
- ~~— (BA) in compliance with Subdivision (2) of this Division;~~
- ~~— (BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or~~

- ~~— (BC) where at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer, in reliance on the exemption under subsection (1);~~
 - ~~— (iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and~~
 - ~~— (v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —~~
 - ~~— (A) the holder of a capital markets services licence to deal in securities;~~
 - ~~— (B) an exempt person in respect of dealing in securities; or~~
 - ~~— (C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.~~
- ~~(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(c)(iii).~~
- ~~(10) In subsections (1)(c) and (8)(c)(iv), “advertisement” means —~~
- ~~— (a) a written or printed communication;~~
 - ~~— (b) a communication by radio, television or other medium of communication; or~~
 - ~~— (c) a communication by means of a recorded telephone message,~~
- ~~that is published in connection with an offer of units or derivatives of units in a business trust, but does not include —~~
- ~~— (i) a document —~~
 - ~~— (A) purporting to describe the units or derivatives of units being offered, or the business and affairs of the person making the offer, the issuer, the trustee of the business trust or the business trust; and~~
 - ~~— (B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units or derivatives of units being offered;~~
 - ~~— (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, which is made by any person; or~~
 - ~~— (iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, or a presentation of oral or written~~

~~material on matters so contained in the notice or report at the general meeting.~~

~~(11) In subsection (10)(i)(A), the reference to the affairs of the person making the offer, the issuer, the trustee of the business trust or the business trust shall —~~

~~— (a) in the case where the person making the offer, the issuer or the trustee of the business trust is a corporation, be construed as including a reference to the matters referred to in section 2(2);~~

~~— (b) in the case where the person making the offer, the issuer or the trustee of the business trust is not a corporation, be construed as referring to such matters as may be prescribed by the Authority; and~~

~~— (c) in the case of the business trust, be construed as referring to such matters as may be prescribed by the Authority.~~

Private placement

~~**282W.** (1) Subdivision (2) of this Division (other than section 282Q) shall not apply to offers of units or derivatives of units in a business trust that are made by a person if —~~

~~— (a) the offers are made to no more than 50 persons within any period of 12 months;~~

~~— (b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;~~

~~— (c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —~~

~~— (i) the holder of a capital markets services licence to deal in securities;~~

~~— (ii) an exempt person in respect of dealing in securities; or~~

~~— (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing; and~~

~~— (d) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —~~

~~— (i) the prospectus has expired pursuant to section 282K; or~~

~~— (ii) the person making the offer has before making the offer —~~

~~— (A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and~~

- ~~— (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.~~
- ~~(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(a).~~
- ~~(3) In determining whether offers of units or derivatives of units in a business trust by a person are made to no more than the applicable number of persons specified in subsection (1)(a) within a period of 12 months, each person to whom—~~
- ~~— (a) an offer of units or derivatives of units issued by the same entity is made by the first mentioned person; or~~
- ~~— (b) an offer of securities is made by the first mentioned person or another person where such offer is a closely related offer,~~
- ~~if any, within that period in reliance on the exemption under this section, section 272B or 302C shall be included.~~
- ~~(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.~~
- ~~(5) For the purposes of subsection (1)—~~
- ~~— (a) an offer of units or derivatives of units in a business trust to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units or derivatives of units which are the subject of the offer;~~
- ~~— (b) an offer of units or derivatives of units in a business trust to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the units or derivatives of units which are the subject of the offer;~~
- ~~— (c) an offer of units or derivatives of units in a business trust to 2 or more persons who will own the units or derivatives of units acquired as joint owners shall be treated as an offer to a single person;~~
- ~~— (d) an offer of units or derivatives of units in a business trust to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;~~
- ~~— (e) offers of units or derivatives of units in a business trust made by a person as an agent of another person shall be treated as offers made by that other person;~~
- ~~— (f) where an offer is made to a person with a view to another person acquiring an interest in those units or derivatives of units in a business trust by virtue of section 4, only the second mentioned person shall be counted for the purposes of determining whether offers of the units or~~

~~derivatives of units are made to no more than the applicable number of persons specified in subsection (1)(a); and~~

~~— (g) where —~~

~~— (i) an offer of units or derivatives of units in a business trust is made to a person in reliance on the exemption under subsection (1) with a view to those units or derivatives of units being subsequently offered for sale to another person; and~~

~~— (ii) that subsequent offer —~~

~~— (A) is not made in reliance on an exemption under any provision of this Subdivision; or~~

~~— (B) is made in reliance on an exemption under subsection (1) or section 282ZC,~~

~~both persons shall be counted for the purposes of determining whether offers of the units or derivatives of units are made to no more than the applicable number of persons specified in subsection (1)(a).~~

~~(6) In subsection (1)(b), “advertisement” has the same meaning as in section 282V(10).~~

~~Offer made under certain circumstances~~

~~**282X.** (1) Subdivision (2) of this Division (other than subsection (1)(a) of sections 282C and 282Q) shall not apply to an offer of units or derivatives of units in a business trust if —~~

~~— (a) it is made in connection with a take over offer which is in compliance with the Take over Code;~~

~~— (b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some or all of the shares of a particular class in a corporation —~~

~~— (i) to all members of the corporation or all members of the corporation holding shares of that class; or~~

~~— (ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,~~

~~and such offer complies with the Take over Code as though the Take over Code were applicable to it;~~

~~— (c) it is made in connection with a proposed compromise or arrangement between —~~

~~— (i) a corporation and its creditors or a class of them; or~~

~~— (ii) a corporation and its members or a class of them,~~

~~and such proposed compromise or arrangement and the execution thereof complies with the Take over Code as though the Take over Code were applicable to it;~~

~~—— (d) it is an offer of units in a business trust (not being such excluded units in a business trust, or units in such excluded business trust, as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange;~~

~~—— (e) it is an offer of derivatives of units in a business trust (not being such excluded derivatives of units in a business trust, or derivatives of units in such excluded business trust, as may be prescribed by the Authority) where ——~~

~~—— (i) the derivatives of units have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange; or~~

~~—— (ii) an application has been or will be made for permission for the derivatives of units to be listed for quotation or quoted on a securities exchange and the units have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange;~~

~~—— (f) it is an offer of units in a business trust made to any existing unitholder of the business trust or any holder of debentures of the trustee manager issued in its capacity as trustee manager of the business trust whose units are listed for quotation on a securities exchange; or~~

~~—— (g) it is an offer of derivatives of units in a business trust made to any existing unitholder of the business trust or any holder of debentures of the trustee manager issued in its capacity as trustee manager of the business trust whose units are listed for quotation on a securities exchange, where such derivatives of units may only be exercised or converted by any existing unitholder or holder of debentures into units of the business trust.~~

~~(2) An offer of units or derivatives of units in a business trust does not come within subsection (1)(d) or (e) if ——~~

~~—— (a) the units or derivatives of units being offered are borrowed by the issuer from an existing unitholder or holder of derivatives of units, solely for the purpose of facilitating the offer of units or derivatives of units by the issuer; and~~

~~—— (b) such borrowing is made under an agreement or arrangement between the issuer and the unitholder or holder which promises the issue or allotment of units or derivatives of units by the issuer to the unitholder or holder at the same time or shortly after the offer.~~

~~(3) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust if ——~~

~~— (a) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation—~~

~~— (i) to all members of the corporation or all members of the corporation holding shares of that class; or~~

~~— (ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,~~

~~where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take overs of the country in which the corporation was incorporated;~~

~~— (b) it is made in connection with a proposed compromise or arrangement between—~~

~~— (i) an unlisted corporation and its creditors or a class of them; or~~

~~— (ii) an unlisted corporation and its members or a class of them,~~

~~and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take overs, compromises and arrangements of the country in which the corporation was incorporated;~~

~~— (c) it is made (whether or not in relation to units or derivatives of units in a business trust that have been previously issued) by the trustee of the business trust to a qualifying person, where the units or derivatives of units are to be held by or for the benefit of the qualifying person and are the units or derivatives of units of the business trust or the securities of any of its related parties;~~

~~— (d) it is an offer to enter into an underwriting agreement relating to units or derivatives of units in a business trust; or~~

~~— (e) it is an offer of units or derivatives of units in a business trust—~~

~~— (i) being a business trust which is registered in Singapore or otherwise, whose units or derivatives of units are not listed for quotation on a securities exchange; or~~

~~— (ii) being a business trust which is not registered in Singapore, whose units or derivatives of units are listed for quotation on a securities exchange and such listing is not a primary listing,~~

~~that is made to existing unitholders of the business trust or holders of debentures of the trustee issued in its capacity as trustee of the business trust (whether or not it is renounceable in favour of persons other than existing unitholders or holders of debentures).~~

~~(4) An offer of units or derivatives of units in a business trust comes within subsection (3)(e) only if no selling or promotional expenses are paid or~~

~~incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —~~

- ~~—— (a) the holder of a capital markets services licence to deal in securities;~~
- ~~—— (b) an exempt person in respect of dealing in securities; or~~
- ~~—— (c) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealings.~~

~~(5) For the purposes of subsection (3)(c), a person is a qualifying person in relation to a business trust if he is a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the trustee of the business trust or a related corporation of that trustee (being a corporation), or if he is the spouse, widow, widower or a child, adopted child or step child below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.~~

~~(6) Where, on the application of any person interested, the Authority declares that circumstances exist whereby —~~

- ~~—— (a) the cost of providing a prospectus for an offer of units or derivatives of units in a business trust outweighs the resulting protection to investors; or~~
- ~~—— (b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer of units or derivatives of units in a business trust,~~

~~then Subdivision (2) of this Division (other than section 282Q) shall not apply to such offer for a period of 6 months from the date of the declaration.~~

~~(7) The Authority may, on making a declaration under subsection (6), impose such conditions or restrictions on the offer as the Authority may determine.~~

~~(8) A declaration made under subsection (6) shall be final.~~

~~(9) Any person who contravenes any of the conditions or restrictions specified in the declaration made under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~(10) In subsection (1)(b) and (c), “corporation” means a corporation that is not a company.~~

~~(11) In subsection (3)(a) and (b), “unlisted corporation” means a corporation —~~

- ~~—— (a) that is not a company; and~~

~~— (b) the shares or debentures, or units of shares or debentures of which are not listed for quotation on any securities exchange.~~

Offer made to institutional investors

~~282Y. Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust, whether or not they have been previously issued, made to an institutional investor.~~

Offer made to accredited investors and certain other persons

~~282Z. (1) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust, whether or not they have been previously issued, where the offer is made to a relevant person, if—~~

~~— (a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;~~

~~— (b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by—~~

~~— (i) the holder of a capital markets services licence to deal in securities;~~

~~— (ii) an exempt person in respect of dealing in securities; or~~

~~— (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing; and~~

~~— (c) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered—~~

~~— (i) the prospectus has expired pursuant to section 282K; or~~

~~— (ii) the person making the offer has before making the offer—~~

~~— (A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and~~

~~— (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.~~

~~(2) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust to a person who acquires the units or derivatives of units as principal, whether or not the units or derivatives of units have been previously issued, if—~~

~~— (a) the offer is on terms that the units or derivatives of units may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;~~

- ~~—— (b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer;~~
- ~~—— (c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by ——~~
- ~~—— (i) the holder of a capital markets services licence to deal in securities;~~
- ~~—— (ii) an exempt person in respect of dealing in securities; or~~
- ~~—— (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing; and~~
- ~~—— (d) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered ——~~
- ~~—— (i) the prospectus has expired pursuant to section 282K; or~~
- ~~—— (ii) the person making the offer has before making the offer ——~~
- ~~—— (A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and~~
- ~~—— (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.~~

~~(3) In this section ——~~

~~“advertisement” means ——~~

- ~~—— (a) a written or printed communication;~~
- ~~—— (b) a communication by radio, television or other medium of communication; or~~
- ~~—— (c) a communication by means of a recorded telephone message,~~
~~that is published in connection with an offer in respect of units or derivatives of units in a business trust, but does not include ——~~
- ~~—— (i) an information memorandum;~~
- ~~—— (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, which is made by any person; or~~
- ~~—— (iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, or a presentation of oral or written~~

~~material on matters so contained in the notice or report at the general meeting;~~

~~“information memorandum” means a document—~~

~~—(a) purporting to describe—~~

~~—(i) the units or derivatives of units in the business trust being offered; or~~

~~—(ii) the business and affairs of any one or more of the following—~~

~~—(A) the issuer;~~

~~—(B) the person making the offer;~~

~~—(C) the business trust;~~

~~—(D) the trustee of the business trust; and~~

~~—(b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units or derivatives of units in the business trust being offered;~~

~~“relevant person” means—~~

~~—(a) an accredited investor;~~

~~—(b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;~~

~~—(c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;~~

~~—(d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or~~

~~—(e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).~~

~~(4) In the definition of “information memorandum” in subsection (3), the reference to the affairs of the issuer, the person making the offer, the trustee of the business trust or the business trust shall—~~

~~—(a) in the case where the issuer, the person making the offer or the trustee of the business trust is a corporation, be construed as including a reference to the matters referred to in section 2(2);~~

~~—(b) in the case where the issuer, the person making the offer or the trustee of the business trust is not a corporation, be construed to refer to such matters as may be prescribed by the Authority; and~~

~~—(c) in the case of a business trust, be construed as referring to such matters as may be prescribed by the Authority.~~

~~(5) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units or derivatives of units in a business trust under section 282Y or this section for his own account shall be considered an exempt person even though he does not comply with that requirement.~~

~~(6) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2)(a).~~

~~Offer of securities acquired pursuant to section 282Y or 282Z~~

~~**282ZA.** (1) Notwithstanding sections 282V, 282W, 282X(1)(d) and (e) and (3)(e) and 282ZB but subject to subsection (7), where units or derivatives of units in a business trust initially acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z are sold within the period of 6 months from the date of the initial acquisition to any person other than —~~

~~— (a) an institutional investor;~~

~~— (b) a relevant person as defined in section 282Z(3); or~~

~~— (c) any person pursuant to an offer referred to in section 282Z(2),~~

~~then Subdivision (2) of this Division shall apply to the offer resulting in that sale.~~

~~(1A) The reference to the sale of derivatives of units in a business trust under subsection (1) shall, in a case where the derivatives of units initially acquired are derivatives of units with an attached right of conversion into units in the business trust, include a reference to the sale of the converted units.~~

~~(2) Where units or derivatives of units in a business trust initially acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z are sold to —~~

~~— (a) an institutional investor;~~

~~— (b) a relevant person as defined in section 282Z(3); or~~

~~— (c) any person pursuant to an offer referred to in section 282Z(2),~~

~~Subdivision (2) of this Division shall not apply to the offer resulting in that sale.~~

~~(3) Subject to subsection (7), securities of a corporation (other than a corporation that is an accredited investor) —~~

~~— (a) the sole business of which is to hold investments; and~~

~~— (b) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,~~

~~shall not be transferred within 6 months after the corporation has acquired any units or derivatives of units in a business trust pursuant to an offer made in reliance on an exemption under section 282Z unless —~~

~~— (i) that transfer —~~

~~— (A) is made only to institutional investors or relevant persons as defined in section 282Z(3); or~~

~~— (B) arises from an offer referred to in section 282Z(2);~~

~~— (ii) no consideration is or will be given for the transfer; or~~

~~— (iii) the transfer is by operation of law.~~

~~(4) Subject to subsection (7), where —~~

~~— (a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and~~

~~— (b) each beneficiary of the trust is an individual who is an accredited investor,~~

~~the beneficiaries' rights and interest (howsoever described) in the trust shall not be transferred within 6 months after units or derivatives of units in a business trust are acquired for the trust pursuant to an offer made in reliance on an exemption under section 282Z unless —~~

~~— (i) that transfer —~~

~~— (A) is made only to institutional investors or relevant persons as defined in section 282Z(3); or~~

~~— (B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;~~

~~— (ii) no consideration is or will be given for the transfer; or~~

~~— (iii) the transfer is by operation of law.~~

~~(5) For the avoidance of doubt, the reference to beneficiaries in subsection (4) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.~~

~~(6) For the avoidance of doubt, where any units or derivatives of units in a business trust are acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z, an offer to sell those units or derivatives of units may be made in reliance on an exemption under section 282X(1)(d) or (e) after 6 months have elapsed from the date of the first mentioned offer.~~

~~(7) Subsections (1), (3) and (4) shall not apply where the units or derivatives of units in the business trust acquired are of the same class as other units or derivatives of units in the business trust —~~

- ~~— (a) an offer of which has previously been made in or accompanied by a prospectus; and~~
- ~~— (b) which are listed for quotation on a securities exchange.~~

Offer of units converted from debentures

~~**282ZAA.**— (1) Notwithstanding sections 282V, 282W, 282X(1)(d) and (e) and (3)(e) and 282ZB, where—~~

- ~~— (a) debentures with an attached right of conversion into units in a business trust are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275; and~~
- ~~— (b) the debentures are then converted into the units,~~

~~then Subdivision (2) shall apply to an offer resulting in a sale of any of the units if the sale takes place within 6 months from the date of acquisition of the debentures.~~

~~(2) Subsection (1) shall not apply to a sale of the units to—~~

- ~~— (a) an institutional investor;~~
- ~~— (b) a relevant person as defined in section 282Z(3); or~~
- ~~— (c) any person pursuant to an offer referred to in section 282Z(2).~~

~~(3) Subsection (1) shall not apply where the units in the business trust sold are of the same class as other units in the business trust—~~

- ~~— (a) an offer of which has previously been made in or accompanied by a prospectus; and~~
- ~~— (b) which are listed for quotation on a securities exchange.~~

Offer made using offer information statement

~~**282ZB.**— (1) Subject to subsection (2), Subdivision (2) of this Division (other than subsection (1)(a) of section 282C and section 282Q) shall not apply to an offer of units or derivatives of units in a business trust (not being such securities as may be prescribed by the Authority) issued by a trustee manager acting in its capacity as trustee manager of the business trust where units of the business trust which have been previously issued are listed for quotation on a securities exchange, whether by means of a rights issue or otherwise, if—~~

- ~~— (a) in the case where derivatives of units in a business trust are being issued by the trustee manager in its capacity as trustee manager of the business trust, the units are those of that business trust;~~
- ~~— (b) an offer information statement relating to the offer which complies with such form and content requirements as may be prescribed by the Authority is lodged with the Authority; and~~
- ~~— (c) either—~~
 - ~~— (i) the offer is made in or accompanied by the offer information statement referred to in paragraph (b); or~~

~~——(ii) all the conditions in subsection (2A) are satisfied.~~

~~(2) Subsection (1) shall only apply to an offer of units or derivatives of units in a business trust referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.~~

~~(2A) The conditions referred to in subsection (1)(c)(ii) are——~~

~~——(a) the offer is made using any automated teller machine or such other electronic means as may be prescribed by the Authority;~~

~~——(b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer——~~

~~——(i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and~~

~~——(ii) that he should read the offer information statement before submitting his application,~~

~~before enabling him to submit any application to subscribe for or purchase securities; and~~

~~——(c) the person making the offer complies with such other requirements as the Authority may prescribe.~~

~~(3) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.~~

~~(4) Sections 282I, 282J, 282N, 282O and 282P shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.~~

~~(5) For the purposes of subsection (4)——~~

~~——(a) a reference in section 282I or 282J to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and~~

~~——(b) a reference in section 282N or 282O to any information or new circumstance required to be included in a prospectus under section 282F shall be read as a reference to any information prescribed under subsection (1)(b).~~

~~(6) Where the written consent of an expert is required to be given under section 282I (as applied in relation to an offer information statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.~~

~~(7) Where the written consent of an issue manager or underwriter is required to be given under section 282J (as applied in relation to that statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.~~

Making offer using automated teller machine or electronic means

~~282ZC.~~—(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of units or derivatives of units in a business trust using —

— (a) any automated teller machine; or

— (b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 282C(1)(b)(i) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 282C(4) that the offer be made in or accompanied by a profile statement in respect of the offer.

(2) For the avoidance of doubt, a prospectus which complies with all other requirements of section 282C(1)(b)(i) or, where applicable, a profile statement which complies with all other requirements of section 282C(4) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

— (a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and

— (b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase units or derivatives of units in a business trust.

Revocation of exemption

~~282ZD.~~ (1) Where the Authority considers that a person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section 282X(7), or that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section shall be final and conclusive and there shall be no appeal therefrom.

Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act

~~282ZE.~~ For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part

~~shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.~~

Subdivision (4) — Debentures

Applicability of provisions relating to prospectus requirements

~~282ZF. Division 1 of this Part shall apply, subject to such modifications and adaptations as may be prescribed, to an offer to subscribe for or purchase debentures or units of debentures (within the meaning of section 239(1)) issued by a trustee of a trust on behalf of the trust and have effect accordingly.~~

Division 2 — Collective Investment Schemes

Subdivision (1) — Interpretation

Interpretation of this Division

283.—(1) In this Division, unless the context otherwise requires —

“control”, in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

- (a) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and
- (b) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, units in a collective investment scheme to be issued or sold and which contains the information required to be included in a prospectus as may be prescribed under section 296(1)(a)(i), except for such information as may be prescribed by the Authority;

“product highlights sheet” means a product highlights sheet referred to in section 296A(1);

“profile statement” means a profile statement referred to in section 296(2);

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of units in a collective investment scheme or proposed collective investment scheme, but does not include —

(a) a profile statement; ~~or~~

(b) any material, advertisement or publication which is authorised by section 300 (other than subsection (3)); or

(c) a product highlights sheet;

“recognised securities exchange” means a corporation which has been declared by the Authority, by order published in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

“related party” means —

(a) in relation to an entity —

(i) a director or an equivalent person of the entity;

(ii) the chief executive officer or an equivalent person of the entity;

(iii) a person who controls the entity;

(iv) a related corporation;

(v) any other entity controlled by it;

(vi) any other entity controlled by the person referred to in sub-paragraph (iii); and

(vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and

(b) in relation to an individual —

(i) his immediate family;

(ii) a trustee of any trust of which the individual or any member of the individual’s immediate family is —

(A) a beneficiary; or

(B) where the trust is a discretionary trust, a discretionary object,

when the trustee acts in that capacity; and

(iii) any corporation in which he and his immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 298(1), as the case may be;

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 298(1), as the case may be;

“unit trust” means a collective investment scheme under which the property is held on trust for the participants.

(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division, a person makes an offer of units in a collective investment scheme if, and only if, as principal —

(a) he makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those units by him or another person with whom he has made arrangements for that issue or sale; or

(b) he invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those units by him or another person with whom he has made arrangements for that issue or sale.

(4) In subsection (3), “sale” includes any disposal for valuable consideration.

Use of term “real estate investment trust”

283A.—(1) No person shall, when describing or referring to any arrangement the rights or interests of which are, will be or have been the subject of an offer or intended offer, use the term “real estate investment trust” or any of its derivatives in any language in the name or description or any representation of that arrangement, unless —

(a) the arrangement is authorised under section 286 or is one for which an application for authorisation has been made and has not been refused by the Authority under that section;

(b) the arrangement is recognised under section 287 or is one for which an application for recognition has been made and has not been refused by the Authority under that section; or

(c) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a class of persons declared by the Authority by order published in the *Gazette* as persons who may use such term or derivative.

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

(3) For the avoidance of doubt, in subsection (1) —

- (a) “offer” or “intended offer”, in relation to any rights or interests in an arrangement, includes an offer or intended offer in relation to any such rights or interests that have previously been issued; and
- (b) “representation”, in relation to an arrangement, includes a representation of the arrangement in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

Code on Collective Investment Schemes

284.—(1) For the more effective administration, supervision and control of collective investment schemes, the Authority shall, under section 321, issue a code, to be known as the Code on Collective Investment Schemes.

(2) The Authority may from time to time revise the Code on Collective Investment Schemes by deleting, amending or adding to the provisions thereof.

(3) The Code on Collective Investment Schemes shall be deemed not to be subsidiary legislation.

Authority may disapply this Division to certain offers and invitations

284A. Notwithstanding any provision to the contrary in this Division, where —

- (a) an offer of units in a collective investment scheme is one to which (but for this section) both this Division and Division 1 apply; and
- (b) the Authority has by order published in the *Gazette* declared that this Division shall not apply to that offer or a class of offers to which that offer belongs,

then this Division (other than section 283A) does not apply to that offer.

Division not to apply to certain collective investment schemes which are business trusts

284B. This Division (other than section 283A) does not apply to an offer of units in a collective investment scheme, where —

- (a) the collective investment scheme is also a registered business trust; or
- (b) the collective investment scheme is also a business trust and the offer is made in reliance on an exemption under Subdivision (3) of Division 1A.

Modification of provisions to certain offers

284C. The Authority may, if it thinks it necessary in the interest of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of units in a collective investment scheme as may be prescribed, and the provisions of this Division shall apply to such offer subject to such modifications or adaptations.

Subdivision (2) — Authorisation and recognition

Requirement for authorisation or recognition

285.—(1) No person shall make an offer of units in a collective investment scheme if the collective investment scheme has not been authorised under section 286 or recognised under section 287.

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

Authorised schemes

286.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, authorise a collective investment scheme constituted in Singapore, subject to —

- (a) subsection (2);
- (b) the conditions specified in subsection (3); and
- (c) such conditions or restrictions as the Authority may think fit to impose by notice in writing.

(1A) The Authority may, at any time, by notice in writing to the responsible person for a collective investment scheme authorised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(c) or impose such further condition or restriction as the Authority may think fit.

(2) The Authority may authorise, under subsection (1), a collective investment scheme which is constituted as a unit trust if and only if the Authority is satisfied that —

- (a) there is a manager for the scheme which satisfies the requirements in subsection (3);
- (b) there is a trustee for the scheme approved under section 289;
- (c) there is a trust deed in respect of the scheme entered into by the manager and the trustee for the scheme that complies with prescribed requirements; and
- (d) the scheme, the manager for the scheme and the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes.

(3) It shall be a condition for the authorisation of a collective investment scheme under subsection (1) that —

- (a) the manager of the scheme is —
 - (i) in the case of a collective investment scheme —
 - (A) that is a trust;

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

(C) all or any units of which are listed for quotation on an approved securities exchange,

the holder of a capital markets services licence for real estate investment trust management; and

(ii) in all other cases, the holder of a capital markets services licence for fund management or a person exempted under section 99(1)(a), (b), (c) or (d) in respect of fund management; and

(b) the manager for the scheme is a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager.

(4) The Authority may authorise, under subsection (1), a collective investment scheme which is not constituted as a unit trust if and only if the Authority is satisfied that the scheme and the manager for the scheme comply with such requirements as may be prescribed.

(5) Without prejudice to subsection (2), the Authority may refuse to authorise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(6) The Authority shall not refuse to authorise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to authorise the collective investment scheme on the basis of any of the following circumstances:

(a) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(7) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority has refused to authorise that scheme under subsection (1), appeal to the Minister whose decision shall be final.

(8) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(9) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme authorised under subsection (1).

(10) The responsible person for a collective investment scheme authorised under subsection (1) and the approved trustee for the scheme, to the extent applicable, shall ensure that the conditions and requirements set out in subsections (2), (3) and (4), and every condition or restriction imposed by the Authority under subsection (1)(c) or (1A), as applicable to that scheme shall continue to be satisfied.

(11) Notwithstanding subsection (10), a failure by any person to comply with the Code on Collective Investment Schemes shall not of itself render that person liable to criminal proceedings but such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(12) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may, in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(13) The responsible person for a collective investment scheme which is authorised under subsection (1) shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(14) Where the manager for a collective investment scheme which is constituted as a unit trust and authorised under subsection (1) fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(15) Any person who contravenes subsection (10) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Recognised schemes

287.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, recognise a collective investment scheme constituted outside Singapore, subject to —

~~(a) subsection (2);~~

~~(b)~~ (a) the conditions specified in subsection (3); and

~~(c)~~ (b) such conditions or restrictions as the Authority may think fit to impose by notice in writing.

(1A) The Authority may, at any time, by notice in writing to the responsible person for a collective investment scheme recognised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(c) or impose such further condition or restriction as the Authority may think fit.

(2) In determining whether to ~~The Authority may recognise~~ a collective investment scheme under subsection (1), ~~if and only if the Authority may have regard to~~ is satisfied that —

(a) whether the laws and practices of the jurisdictions under which the scheme is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under this Division in the case of comparable authorised schemes;

(aa) such other criteria as may be prescribed by the Authority;

(b) [*Deleted by Act 1/2005*]

(c) there is a manager for the scheme which satisfies the requirements in subsection (3);

(d) there is a representative for the scheme for the functions set out in subsection (13) who is —

(i) an individual resident in Singapore; or

(ii) a company, or a foreign company registered under Division 2 of Part XI of the Companies Act (Cap. 50);

(e) the Authority has been furnished with information regarding —

(i) the name of the representative referred to in paragraph (d) and his address (where such representative is a corporation) or contact particulars (where such representative is an individual); and

(ii) such other information as the Authority may prescribe; and

(f) the scheme, the manager for the scheme and the trustee for the scheme, where applicable, comply with this Act and the Code on Collective Investment Schemes.

(3) It shall be a condition for the recognition of a collective investment scheme under subsection (1) that the manager for the scheme is —

(a) licensed or regulated in the jurisdiction of its principal place of business; and

(b) a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager.

(4) Without prejudice to subsection (2), the Authority may refuse to recognise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to recognise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the collective investment scheme on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(6) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority has refused to recognise that scheme under subsection (1), appeal to the Minister whose decision shall be final.

(7) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme recognised under subsection (1).

(9) The responsible person for a collective investment scheme recognised under subsection (1) shall ensure that the conditions and requirements set out in subsections ~~(2)~~ and (3), and every condition or restriction imposed by the Authority under subsection (1)(c) or (1A), as applicable to that scheme, shall continue to be satisfied.

(10) Notwithstanding subsection (9), a failure by any person to comply with the Code on Collective Investment Schemes shall not of itself render that person liable to criminal proceedings but may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(11) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(12) The responsible person for a collective investment scheme which is recognised under subsection (1) shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(13) The representative for a collective investment scheme which is recognised under subsection (1) shall carry out, or procure the carrying out of the following functions:

- (a) facilitate —
 - (i) the issuing and redeeming of units in the scheme;
 - (ii) the publishing of sale and purchase prices of units in the scheme;
 - (iii) the sending of reports of the scheme to participants;
 - (iv) the furnishing of such books relating to the sale and redemption of units as the Authority may require; and
 - (v) the inspection of the instruments constituting the scheme;
- (b) either maintain for inspection in Singapore a subsidiary register of participants who subscribed for or purchased their units in Singapore, or maintain in Singapore any facility that enables the inspection or extraction of the equivalent information;
- (c) within 14 days after any change in the particulars referred to in subsection (2)(e), give notice in writing of such change to the Authority;
- (d) furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act; and
- (e) such other functions as the Authority may prescribe.

(13A) In carrying out or procuring the carrying out of the functions referred to in subsection (13), the representative shall ensure that —

- (a) for the purposes of subsection (13)(a)(ii), the sale and purchase prices of units in the collective investment scheme are published in the language of the prospectus;
- (b) for the purposes of subsection (13)(a)(iii), the reports of the scheme sent to participants are prepared in the language of the prospectus, except in relation to any participant who has consented to being sent a report in a language other than the language of the prospectus;
- (c) for the purposes of subsection (13)(a)(v), if the instruments constituting the scheme are not in the language of the prospectus, an accurate translation of the instruments in the language of the prospectus is made available to a participant for inspection, unless the participant has consented to the making available to him for inspection of the instruments in a language other than the language of the prospectus; and
- (d) for the purposes of subsection (13)(b), if the subsidiary register of participants or equivalent information is not in the language of the prospectus, an accurate translation of the register or equivalent information in the language of the prospectus is made available to a participant for inspection or extraction, unless the participant has consented to the making available to him for

inspection or extraction of the register or equivalent information in a language other than the language of the prospectus.

(13B) In subsection (13A), “language of the prospectus” means the language of the prospectus accompanying or making the offer of units in the collective investment scheme.

(13C) Section 318A(2) shall not apply to the instruments constituting the scheme referred to in subsection (13)(a)(v) or to the subsidiary register of participants or equivalent information referred to in subsection (13)(b).

(14) Any person who contravenes subsection (9), (12) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Revocation, suspension or withdrawal of authorisation or recognition

288.—(1) The Authority may revoke the authorisation of a collective investment scheme granted under section 286 or the recognition of a collective investment scheme granted under section 287 if —

- (a) the application for authorisation or recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the authorisation or recognition;
- (aa) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be against the public interest;
- (b) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be prejudicial to its participants or potential participants; or
- (c) in the case of —
 - (i) a scheme authorised under section 286, the responsible person for the scheme or the trustee for the scheme, where applicable, fails to comply with section 286(10) or (13); or
 - (ii) a scheme recognised under section 287, the responsible person for the scheme or the representative for the scheme, where applicable, fails to comply with section 287(9), (12) or (13).

(2) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1), the Authority may issue such directions as it deems fit to the responsible person for the scheme, including a direction that he —

- (a) refund all moneys contributed by the participants of the scheme; or

(b) provide the participants with an option, on such terms as the Authority may approve, to obtain from him a refund of all moneys contributed by them or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider whether the responsible person for the collective investment scheme is able to liquidate the property of the scheme without material adverse financial effect to the participants, and for this purpose, the factors which the Authority may take into account include —

(a) whether a significant amount of the moneys contributed by the participants has been invested;

(b) the liquidity of the property of the scheme; and

(c) the penalties, if any, payable for liquidating the property.

(4) A responsible person who contravenes any of the directions issued by the Authority to him under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Notwithstanding subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the authorisation or recognition of a collective investment scheme, suspend the authorisation or recognition of that scheme for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1) or suspends the authorisation or recognition of a collective investment scheme under subsection (5), it shall notify the responsible person for the scheme.

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the responsible person for a collective investment scheme, in such form and manner as may be prescribed, withdraw the authorisation or recognition of that scheme.

(8) The Authority may refuse to withdraw the authorisation or recognition of a collective investment scheme under subsection (7) where the Authority is of the opinion that —

(a) there is any matter concerning the scheme which should be investigated before the authorisation or recognition is withdrawn; or

(b) the withdrawal of the authorisation or recognition would not be in the public interest.

(8A) The Authority shall not —

(a) revoke the authorisation or recognition of a collective investment scheme under subsection (1);

(b) suspend the authorisation or recognition of a collective investment scheme under subsection (5); or

- (c) refuse the withdrawal of the authorisation or recognition of a collective investment scheme under subsection (8),

without giving the responsible person of the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the revocation or suspension is on the ground that the continued authorisation or recognition of the scheme is against the public interest on the basis of any of the following circumstances:

- (i) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (ii) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(8B) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority —

- (a) has revoked the authorisation or recognition, as the case may be, of that scheme under subsection (1);
- (b) has suspended the authorisation or recognition, as the case may be, of that scheme under subsection (5); or
- (c) has refused to withdraw the authorisation or recognition, as the case may be, of that scheme under subsection (8),

appeal to the Minister whose decision shall be final.

(9) Where the Authority revokes an authorisation or recognition under subsection (1), suspends an authorisation or recognition under subsection (5) or withdraws an authorisation or recognition under subsection (7), it may —

- (a) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and
- (b) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.

Approval of trustees

289.—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, approve a public company to act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts (referred to in this Subdivision as an approved trustee), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing.

(1A) The Authority may, at any time, by notice in writing to the approved trustee, vary or revoke any condition or restriction imposed by the Authority under subsection (1) or impose such further condition or restriction as the Authority may think fit.

(2) The Authority shall not approve a public company to act as trustee under subsection (1) unless the company satisfies such financial requirements and other criteria as the Authority may prescribe.

(3) An approved trustee shall continue to satisfy the financial requirements and other criteria prescribed under subsection (2) and every condition or restriction imposed by the Authority under subsection (1) or (1A).

(4) Where the Authority is of the opinion that an approved trustee —

- (a) has failed to satisfy a financial requirement or other criterion prescribed under subsection (2), or any condition or restriction imposed by the Authority under subsection (1) or (1A);
- (b) has not carried out its duties with due care and diligence;
- (c) has acted in a manner which prejudices the participants of any authorised collective investment scheme; or
- (d) has failed to comply with this Act or the Code on Collective Investment Schemes,

the Authority may —

- (i) revoke an approval granted under this section and may direct the manager for the collective investment scheme or schemes which such approved trustee was acting for, to appoint a new trustee for the scheme or schemes;
- (ii) prohibit such approved trustee from acting as trustee for any new collective investment scheme; or
- (iii) issue such direction as it deems fit.

(4A) Where, upon the Authority exercising any power under section 292D(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to an approved trustee, the Authority considers that it is in the public interest to do so, the Authority may —

- (a) revoke the approval granted to the approved trustee under this section; and
- (b) direct the manager for the collective investment scheme or schemes, which the approved trustee was acting for, to appoint a new trustee for the scheme or schemes.

(5) An approved trustee shall comply with any direction issued to it under subsection (4).

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

(7) Any approved trustee who contravenes subsection (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the

case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Inspection of approved trustees

290.—(1) The Authority may, from time to time, inspect the books of an approved trustee.

(2) For the purpose of an inspection under this section, the approved trustee under inspection shall afford the Authority access to, and shall produce, its books and shall give such information and facilities as may be required to conduct the inspection.

(3) The Authority shall have the power to copy or take possession of the books of an approved trustee under inspection.

(4) An approved trustee which fails, without reasonable excuse, to produce any book or furnish any information or facilities in accordance with subsection (2), or otherwise obstructs the Authority in the exercise of its powers under this section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Duty of trustees to furnish Authority with such return and information as Authority requires

291. An approved trustee shall furnish such returns and provide such information relating to its business as the Authority may require.

Liability of trustees

292.—(1) Subject to subsection (2), any provision in a trust deed required under section 286(2)(c) or in any contract with the participants of a collective investment scheme to which such a trust deed relates, shall be void in so far as it would have the effect of exempting a trustee under the trust deed from, or indemnifying a trustee against, liability for breach of trust where the trustee fails to exercise the degree of care and diligence required of a trustee.

(2) Subsection (1) shall not invalidate —

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given —

(i) on the agreement thereto of a majority of not less than three-fourths of the participants in a collective investment scheme voting in person or by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Disqualification or removal of director or executive officer

292A.—(1) Notwithstanding the provisions of any other written law —

- (a) an approved trustee shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) an approved trustee which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 9(1)(s) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
 - (A) involving fraud or dishonesty;
 - (B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (ii) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A made against him that remains in force; or
- (vi) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (A) which is being or has been wound up by a court; or
 - (B) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director of an approved trustee which is incorporated in Singapore, or an executive officer of an approved trustee —

- (a) has wilfully contravened or wilfully caused the approved trustee to contravene any provision of this Act;
- (b) has, without reasonable excuse, failed to secure the compliance of the approved trustee with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act; or

(c) has failed to discharge any of the duties of his office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing to the approved trustee, direct the approved trustee to remove the director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, and the approved trustee shall comply with the notice.

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of an approved trustee has failed to discharge the duties of his office for the purposes of subsection (2)(c), have regard to such criteria as may be prescribed.

(4) Before directing an approved trustee to remove a person from his office or employment under subsection (2), the Authority shall —

(a) give the approved trustee and the person notice in writing of its intention to do so; and

(b) in the notice referred to in paragraph (a), call upon the approved trustee and the person to show cause, within such time as may be specified in the notice, why the person should not be removed.

(5) If the approved trustee and the person referred to in subsection (4) —

(a) fail to show cause within the time specified under subsection (4)(b) or within such extended period of time as the Authority may allow; or

(b) fail to show sufficient cause,

the Authority may direct the approved trustee to remove the person under subsection (2).

(6) Any approved trustee which, or any director or executive officer of an approved trustee who, is aggrieved by a direction of the Authority under subsection (2) may, within 30 days after receiving the direction, appeal in writing to the Minister, whose decision shall be final.

(7) Any approved trustee which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(8) No criminal or civil liability shall be incurred by an approved trustee, or any person acting on behalf of the approved trustee, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the approved trustee under this section.

(9) In this section, unless the context otherwise requires —

“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act or any of the written laws set out in the Schedule to that Act.

Information of insolvency, etc.

292B.—(1) Any approved trustee which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, shall immediately inform the Authority of that fact.

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

Interpretation of sections 292C to 292H

292C. In this section and sections 292D to 292H, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved trustee, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved trustee, or acting in an equivalent capacity in relation to the approved trustee;

“relevant business” means any business of an approved trustee —

(a) which the Authority has assumed control of under section 292D; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 292D;

“statutory adviser” means a statutory adviser appointed under section 292D;

“statutory manager” means a statutory manager appointed under section 292D.

Action by Authority if approved trustee unable to meet obligations, etc.

292D.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(a) an approved trustee informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(b) an approved trustee becomes unable to meet its obligations, or is insolvent, or suspends payments;

(c) the Authority is of the opinion that an approved trustee —

- (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;
 - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
 - (iii) has contravened any of the provisions of this Act; or
 - (iv) has failed to comply with any condition or restriction imposed on it under section 289(1) or (1A); or
- (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the approved trustee immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
 - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved trustee on the proper management of such of the business of the approved trustee as the Authority may determine; or
 - (c) assume control of and manage such of the business of the approved trustee as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.
- (3) Where the Authority appoints 2 or more persons as the statutory manager of an approved trustee, the Authority shall specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —
- (a) may be discharged or exercised by such persons jointly and severally;
 - (b) shall be discharged or exercised by such persons jointly; and
 - (c) shall be discharged or exercised by a specified person or such persons.
- (4) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 289(4A), do one or more of the following:
- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
 - (b) further exercise any of the powers under subsection (2);
 - (c) add to, vary or revoke any term or condition specified by the Authority under this section.
- (5) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —
- (a) the exercise or purported exercise of any power under this Act;

(b) the performance or purported performance of any function or duty under this Act; or

(c) the compliance or purported compliance with this Act.

(6) Any approved trustee that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Effect of assumption of control under section 292D

292E.—(1) Upon assuming control of the relevant business of an approved trustee, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, the Authority or statutory manager —

(a) shall manage the relevant business of the approved trustee in the name of and on behalf of the approved trustee; and

(b) shall be deemed to be an agent of the approved trustee.

(3) In managing the relevant business of an approved trustee, the Authority or statutory manager —

(a) shall take into consideration the interests of the public or the section of the public referred to in section 292D(1)(c)(i), and the need to protect investors; and

(b) shall have all the duties, powers and functions of the members of the board of directors of the approved trustee (collectively and individually) under this Act, the Companies Act (Cap. 50) and the constitution of the approved trustee, including powers of delegation, in relation to the relevant business of the approved trustee; but nothing in this paragraph shall require the Authority or statutory manager to call any meeting of the approved trustee under the Companies Act or the constitution of the approved trustee.

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of an approved trustee by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved trustee, which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the approved trustee, for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, except with the approval of the Authority, no person shall be appointed as the chief executive officer or a director of the approved trustee.

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved trustee, the Authority may at any time, by notice in writing to the person and the approved trustee, revoke that approval, and the appointment shall be deemed to be revoked on the date specified in the notice.

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved trustee is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved trustee in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

(a) if there is any conflict or inconsistency between —

- (i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and
- (ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved trustee,

the direction or decision referred to in sub-paragraph (i) shall, to the extent of the conflict or inconsistency, prevail over the direction or decision referred to in sub-paragraph (ii); and

- (b) no person shall exercise any voting or other right attached to any share in the approved trustee in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act shall be invalid and of no effect.

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to an approved trustee, means the memorandum of association and articles of association of the approved trustee.

Duration of control

292F.—(1) The Authority shall cease to be in control of the relevant business of an approved trustee when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(c)(i) or for the protection of investors.

(2) A statutory manager shall be deemed to have assumed control of the relevant business of an approved trustee on the date of his appointment as a statutory manager.

(3) The appointment of a statutory manager in relation to the relevant business of an approved trustee may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
 - (i) the reasons for the appointment have ceased to exist; or
 - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(c)(i) or for the protection of investors; or
- (b) on any other ground,

and upon such revocation, the statutory manager shall cease to be in control of the relevant business of the approved trustee.

(4) The Authority shall, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

- (a) the Authority’s assumption of control of the relevant business of an approved trustee;
- (b) the cessation of the Authority’s control of the relevant business of an approved trustee;
- (c) the appointment of a statutory manager in relation to the relevant business of an approved trustee; and
- (d) the revocation of a statutory manager’s appointment in relation to the relevant business of an approved trustee.

Responsibilities of officers, member, etc., of approved trustee

292G.—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

- (a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee to pay, deliver, convey,

surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the approved trustee which is comprised in, forms part of or relates to the relevant business of the approved trustee, and which is in the person's possession or control; and

- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved trustee, within such time and in such manner as may be specified by the Authority or statutory manager.

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Remuneration and expenses of Authority and others in certain cases

292H.—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved trustee —

- (a) to a statutory manager or statutory adviser appointed in relation to the approved trustee, whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the approved trustee, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

(2) The approved trustee shall reimburse the Authority any remuneration and expenses payable by the approved trustee to a statutory manager or statutory adviser.

Authority may issue directions

293.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions by notice in writing either of a general or specific nature to —

- (a) where a collective investment scheme is constituted as a corporation, the corporation;
- (b) the manager, trustee, or representative for a collective investment scheme; or

(c) any class of such persons referred to in paragraph (a) or (b).

(2) Any person to whom a notice is given under subsection (1) shall comply with such direction as may be contained in the notice.

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

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

Service

294.—(1) Where a collective investment scheme —

(a) is authorised under section 286, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme at his last known address; or

(b) is recognised under section 287, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme or the representative for the scheme at his last known address.

(1A) For the avoidance of doubt, a reference in subsection (1) to service of any document relating to the scheme shall include the service of any process in relation to the scheme.

(2) Any notice or direction to be given or served by the Authority on a corporation (where a collective investment scheme is constituted as a corporation), the manager for a collective investment scheme, the trustee for a collective investment scheme or the representative for a collective investment scheme shall for all purposes be regarded as duly given or served if it has been delivered or sent by post or facsimile transmission to such person at his last known address.

(3) In the case of a corporation, the last known address referred to in subsections (1) and (2) shall be —

(a) if it is a company incorporated in Singapore, the address of its registered office in Singapore; or

(b) if it is a foreign company, the address of its registered office in Singapore or the registered address of its agent or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

Winding up

295.—(1) Where a collective investment scheme is to be wound up, whether under this section or otherwise, the responsible person for the scheme shall give notice in writing of the proposed winding up to the Authority at least 7 days before the winding up.

(2) Where the Authority revokes or withdraws the authorisation of a collective investment scheme under section 288, the responsible person and, where applicable, the trustee shall take the necessary steps to wind up the scheme.

(3) Where —

- (a) the responsible person for a collective investment scheme authorised under section 286 is in liquidation; or
- (b) in the opinion of the trustee for a collective investment scheme authorised under section 286 which is constituted as a unit trust, the responsible person for the scheme has ceased to carry on business or has, to the prejudice of the participants of the scheme, failed to comply with any provision of the trust deed in respect of the scheme,

the trustee shall summon a meeting of the participants for the purpose of determining an appropriate course of action.

(4) A meeting under subsection (3) shall be summoned —

- (a) by giving notice in writing of the proposed meeting at least 21 days before the proposed meeting to each participant at his last known address or, in the case of joint participants, to the participant whose name stands first in the records of the responsible person for the scheme; and
- (b) by publishing, at least 21 days before the proposed meeting, an advertisement giving notice of the meeting in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(5) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the participants present and voting either in person or by proxy at the meeting that the scheme to which the trust deed relates be wound up, the responsible person for the scheme and, where applicable, the trustee shall take the necessary steps to wind up the scheme.

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

(7) Any responsible person or, where applicable, trustee who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) Any trustee who contravenes subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Power to acquire units of participants of real estate investment trust in certain circumstances

295A.—(1) Where an arrangement or a contract involving the transfer of all of the units, or all of the units in any particular class, in a real estate investment trust (referred to in this section as the subject trust), to —

- (a) the trustee of another trust (including the trustee-manager of a business trust and the trustee of another real estate investment trust); or

(b) a corporation,

referred to in this section as the transferee has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the units or as to each class of units whose transfer is involved by participants of the subject trust holding no less than 90% of the total number of those units or of the units of that class (other than units already held at the date of the offer by the transferee), the transferee may, at any time within 2 months after the offer has been so approved, give notice in the prescribed manner to any dissenting participant of the subject trust that it desires to acquire his units.

(2) When a notice referred to in subsection (1) is given, the transferee shall, unless on an application made by a dissenting participant within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting participant under subsection (3) (whichever is the later) a court thinks fit to order otherwise, be entitled and bound to acquire those units —

(a) on the terms which under the arrangement or contract the units of the approving participants are to be transferred to the transferee; or

(b) if the offer contained 2 or more alternative sets of terms, on the terms which were specified in the offer as being applicable to dissenting participants.

(3) Where a transferee has given notice to any dissenting participant of the subject trust that it desires to acquire his units, the dissenting participant shall be entitled to require the transferee by a demand in writing served on the transferee, within one month from the date on which the notice was given, to supply him with a statement in writing of the names and addresses of all other dissenting participants as shown in the register of participants of the subject trust; and the transferee shall not be entitled or bound to acquire the units of the dissenting participants until 14 days after the posting of the statement of such names and addresses to the dissenting participant.

(4) Where, pursuant to any such arrangement or contract, units in the subject trust are transferred to the transferee or its nominee and those units together with any other units in the subject trust held by the transferee at the date of the transfer comprise or include 90% of the total number of the units in the subject trust or of any class of those units, then —

(a) the transferee shall within one month from the date of the transfer (unless on a previous transfer pursuant to the arrangement or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the participants of the subject trust holding the remaining units in, or the remaining units of that class of units in, the subject trust who have not assented to the arrangement or contract; and

(b) any such participant may within 3 months from receiving the notice require the transferee to acquire his units.

(5) Where a participant has given notice under subsection (4)(b) with respect to any units, the transferee shall be entitled and bound to acquire those units —

- (a) on the terms on which under the arrangement or contract the units of the approving participants were transferred to it; or
- (b) on such other terms as are agreed or as the court on the application of either the transferee or the participant thinks fit to order.

(6) Where a notice has been given by the transferee under subsection (1) and a court has not, on an application made by the dissenting participant, ordered to the contrary, the transferee shall —

- (a) after the expiration of one month after the date on which the notice has been given;
- (b) after 14 days after a statement has been supplied to a dissenting participant under subsection (3); or
- (c) if an application to the court by the dissenting participant is then pending, after that application has been disposed of,

transmit a copy of the notice to the trustee of the subject trust together with an instrument of transfer executed on behalf of the participant by any person appointed by the transferee and on its own behalf by the transferee, and pay, allot or transfer to the trustee of the subject trust the amount or other consideration representing the price payable by the transferee for the units which by virtue of this section the transferee is entitled to acquire, and the trustee of the subject trust shall thereupon register the transferee as the holder of those units.

(7) Any sums received by the trustee of the subject trust under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that trustee in trust for the several persons who had held the units in respect of which they were respectively received.

(8) Where any consideration other than cash is held in trust by the trustee of the subject trust for any person under this section, the trustee may, after the expiration of 2 years from, and shall, before the expiration of 10 years from, the date on which such consideration was allotted or transferred to him, transfer such consideration to the Official Receiver.

(9) The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal in accordance with section 295B.

(10) In determining the units in the subject trust already held by the transferee at the date of the offer under subsection (1) or the percentage of the total number of units in the subject trust or of any class of those units held by the transferee under subsection (4), units held or acquired —

- (a) by a nominee on behalf of the transferee;
- (b) where the transferee is a corporation, by its related corporation or by a nominee of the related corporation;
- (c) where the transferee is the trustee-manager of a business trust or the trustee of a real estate investment trust —

- (i) by a person who controls more than 50% of the voting power in the business trust or real estate investment trust, or by a nominee of that person;
 - (ii) by the trustee-manager of the business trust on its own account, or by the manager for the real estate investment trust, or by a nominee of the trustee-manager or manager; or
 - (iii) by a related corporation of the trustee-manager for the business trust or the manager for the real estate investment trust or by a nominee of that related corporation; or
- (d) where the transferee is the trustee of a trust that is not a business trust or real estate investment trust, by a related corporation of the trustee (being a corporation) or by a nominee of that related corporation,

shall be treated as held or acquired by the transferee.

(11) For the avoidance of doubt, in this section —

- (a) a reference to a transferee (being the trustee of a trust) holding, acquiring or contracting to acquire units in another trust is a reference to his doing any of these as trustee of the first-mentioned trust; and
- (b) a reference to a transfer of units of a trust to a transferee (being the trustee of another trust) is a reference to such transfer of units to him as trustee of that other trust.

(12) The reference in subsection (1) to units already held by the transferee —

- (a) includes a reference to units which the transferee has contracted to acquire; but
- (b) excludes units which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

(13) Where, during the period within which an offer for the transfer of units to the transferee can be approved, the transferee acquires or contracts to acquire any of the units whose transfer is involved but otherwise than by virtue of the approval of the offer, then the transferee may be treated for the purposes of this section as having acquired or contracted to acquire those units by virtue of the approval of the offer if, and only if —

- (a) the consideration for which the units are acquired or contracted to be acquired (referred to in this subsection as the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (a), no longer exceeds the consideration specified in those terms.

(14) In this section and sections 295B and 295C —

“dissenting participant” includes a participant who has not assented to the arrangement or contract and any participant who has failed or refused to transfer his units to the transferee in accordance with the arrangement or contract;

“Official Receiver” means the Official Assignee appointed under the Bankruptcy Act (Cap. 20) and includes his deputy and any person appointed as Assistant Official Assignee;

“real estate investment trust” means a collective investment scheme that is —

- (a) authorised under section 286 or recognised under section 287; and
- (b) a trust that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any of the units of which are listed for quotation on an approved securities exchange.

Unclaimed money to be paid to Official Receiver

295B.—(1) The Official Receiver who receives moneys arising from the proceeds of a sale or disposal under section 295A shall place the moneys to the credit of a separate account to be entitled the Compulsory Acquisition of Scheme Account.

(2) The interest arising from the investment of the moneys standing to the credit of the Compulsory Acquisition of Scheme Account shall be paid into the Consolidated Fund.

(3) If any person makes any demand for any money placed to the credit of the Compulsory Acquisition of Scheme Account, the Official Receiver, upon being satisfied that that person is entitled to the money, shall authorise payment thereof to be made to him out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to him out of moneys made available by Parliament for the purpose.

(4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made pursuant to subsection (3) may appeal to a court which may confirm, disallow or vary the decision.

(5) Where any unclaimed moneys paid to a person pursuant to subsection (3) are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Compulsory Acquisition of Scheme Account or out of the Consolidated Fund but such other person may have recourse against the first-mentioned person to whom the unclaimed moneys have been paid.

(6) Any unclaimed moneys paid to the credit of the Compulsory Acquisition of Scheme Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account shall, upon the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

Remedies in cases of oppression or injustice

295C.—(1) Any participant of a real estate investment trust may apply to a court for an order under this section on the ground —

- (a) that the affairs of the trust are being conducted by the manager or trustee for the trust, or the powers of the directors of the manager or directors of the trustee for the trust are being exercised, in a manner oppressive to one or more of the participants of the trust including himself or in disregard of his or their interests as participants of the trust; or
- (b) that some act of the manager or trustee for the trust, carried out in its capacity as manager or trustee for the trust, as the case may be, has been done or is threatened or that some resolution of the participants of the trust or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the participants of the trust including himself.

(2) If on such application the court is of the opinion that either of the grounds referred to in subsection (1) is established, the court may, with a view to bringing to an end to or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the manager or trustee for the trust in relation to the trust in future;
- (c) authorise civil proceedings against the directors of the manager or directors of the trustee for the trust to be brought in the name of or on behalf of all the participants of the trust as a whole by such person or persons and on such terms as the court may direct;
- (d) provide for the purchase of the units in the trust by other participants of the trust;
- (e) provide that the trust be wound up; or
- (f) provide that the costs and expenses of and incidental to the application for the order are to be raised and paid out of the property of the trust or to be borne and paid in such manner and by such persons as the court deems fit.

(3) Where an order under this section makes any alteration in or addition to the trust deed of any trust, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the manager or trustee of the trust concerned shall not have power, without the leave of the court, to make any further alteration in or addition to the trust deed that is inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall have the same effect as if duly made by special resolution of the participants of the trust.

(4) A copy of any order made under this section shall be lodged by the applicant with the Authority within 7 days after the making of the order.

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

(6) This section shall apply to a person who is not a participant of a trust but to whom units in the trust have been transmitted by operation of law as it applies to the participants of a trust; and references to a participant or participants shall be construed accordingly.

Subdivision (2A) — Voluntary transfer of business of approved trustee

Interpretation of this Subdivision

295D. In this Subdivision, unless the context otherwise requires —

“approved trustee” means a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts;

“business” includes affairs, property, right, obligation and liability;

“Court” means the High Court or a Judge thereof;

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

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved trustee, or a public company which has applied or will be applying for the Authority’s approval under section 289(1) to act as an approved trustee, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Subdivision;

“transferor” means an approved trustee the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Subdivision.

Voluntary transfer of business

295E.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved trustee) to a transferee, if —

(a) the Authority has consented to the transfer;

(b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved trustee; and

(c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of an approved trustee to transfer the whole or any part of its business under any law.

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

(a) the transferee is a fit and proper person; and

(b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under this Subdivision.

(5) The remuneration and expenses of any person appointed under subsection (4) shall be paid by the transferor and the transferee jointly and severally.

(6) The Authority shall serve a copy of any report furnished under subsection (4) on the transferor and the transferee.

(7) The Authority may require a person to furnish, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Subdivision.

(8) Any person who —

(a) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

Approval of transfer

295F.—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Subdivision.

(2) Before making an application under subsection (1) —

(a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;

- (b) the transferor shall obtain the consent of the Authority under section 295E(1)(a);
 - (c) the transferor and the transferee shall, if they intend to serve on the participants of their respective collective investment schemes a summary of the transfer, obtain the Authority's approval of the summary;
 - (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
 - (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
 - (f) unless the Court directs otherwise, the transferor and the transferee shall serve on the participants of their respective collective investment schemes affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).
- (3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —
- (a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
 - (b) may make any application to the Court in relation to the transfer.
- (4) The Court shall not approve the transfer if the Authority has not consented under section 295E(1)(a) to the transfer.
- (5) The Court may, after taking into consideration the views, if any, of the Authority on the transfer —
- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
 - (b) refuse to approve the transfer.
- (6) If the transferee does not have the Authority's approval under section 289(1) to act as an approved trustee, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee obtaining the Authority's approval under section 289(1) to act as an approved trustee.
- (7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:
- (a) the transfer to the transferee of the whole or any part of the business of the transferor;

- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

(8) Any order under subsection (7) may —

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and
- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order shall be transferred to and vest in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

(10) No order under subsection (7) shall have any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

(12) Where an order is made under this section, the transferor and the transferee shall each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with

that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Subdivision (3) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

296.—(1) No person shall make an offer of units in a collective investment scheme unless the offer —

- (a) is made in or accompanied by a prospectus in respect of the offer —
 - (i) that is prepared in accordance with such requirements as may be prescribed by the Authority;
 - (ii) a copy of which, being one that has been signed in accordance with subsection (2A), is lodged with the Authority; and
 - (iii) that is registered by the Authority; and
- (b) complies with such requirements as may be prescribed by the Authority.

(1A) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

(1B) A preliminary document referred to in subsection (1A) shall contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

(2) Notwithstanding subsection (1), an offer of units in a collective investment scheme may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this Subdivision as a profile statement), instead of a prospectus, if —

- (a) a prospectus is prepared in accordance with such requirements as may be prescribed under subsection (1)(a)(i) and the profile statement is prepared in accordance with such requirements as may be prescribed;
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (2A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer complies with such other requirements as may be prescribed.

(2A) The copy of a prospectus or profile statement lodged with the Authority shall be signed —

- (a) where the person making the offer of units in a collective investment scheme is the responsible person for the scheme, by every director or equivalent

person of the responsible person and every person who is named therein as a proposed director or an equivalent person of the responsible person; and

(b) where the person making the offer of units in a collective investment scheme is not the responsible person for the scheme —

(i) where the responsible person is controlled by —

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer;
or

(C) the person making the offer and one or more of his related parties,

by the persons referred to in paragraph (a) and the persons referred to in sub-paragraph (ii)(A) or (B), as the case may be; and

(ii) in any other case —

(A) where that person is an entity, by every director or equivalent person of that entity; or

(B) where that person is an individual, by the individual or a person authorised by him in writing.

(2B) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(a) by that director or equivalent person; or

(b) by a person who is authorised in writing by that director or equivalent person to sign on his behalf.

(2C) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(a) by that proposed director or equivalent person; or

(b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his behalf.

(3) No person shall make an offer of units in a collective investment scheme if that scheme has not been formed or does not exist.

(4) [*Deleted by Act 1/2005*]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(6) The Authority may register a prospectus or a profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless —

- (a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (12);
- (b) the Authority gives a notice to the person making the offer of an extension, in which case, the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (12);
- (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, in which case the Authority may, at any time up to and including the date on which the extended period ends —
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (12); or
- (d) the person making the offer gives a notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

(6A) Where, after a notice of an opportunity to be heard has been given under subsection (6)(a), (b)(ii) or (c)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date shall not be earlier than such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.

(6AA) For the purposes of subsections (6) and (6A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

(6B) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (2A) and which contains the information required to be included in a prospectus as prescribed under subsection (1)(a)(i), including such information which could be omitted from the preliminary document by virtue of subsection (1B), has been lodged with the Authority.

(6C) A person making an offer of units in a collective investment scheme may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

(7) Subject to subsection (8) —

- (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged; and
- (b) where any amendment to a profile statement is lodged, the profile statement shall be deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged.

(8) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended shall be deemed, for the purposes of subsection (6), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(8A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

(9) The Authority may, for public information, publish —

- (a) a prospectus or profile statement lodged with the Authority under this section; and
- (b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1),

and for the purposes of this subsection, the person making the offer shall provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

(10) The Authority shall refuse to register a prospectus if —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under subsection (1)(a);
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
- (d) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (2A);
- (e) any written consent of an expert to the issue of the prospectus required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (ea) any written consent of an issue manager to the issue of the prospectus required under section 249A(1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (eb) any written consent of an underwriter to the issue of the prospectus required under section 249A(2) (as applied to this Subdivision by virtue of

section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or

(f) the Authority is of the opinion that it is not in the public interest to do so.

(11) The Authority shall refuse to register a profile statement if —

(a) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(b) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under subsection (2)(a);

(c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (2A);

(ca) any written consent of an expert to the issue of the profile statement required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(cb) any written consent of an issue manager to the issue of the profile statement required under section 249A(1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(cc) any written consent of an underwriter to the issue of the profile statement required under section 249A(2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(d) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;

(e) the prospectus has not been registered by the Authority; or

(f) the Authority is of the opinion that it is not in the public interest to do so.

(12) The Authority shall not refuse to register a prospectus under subsection (10) or a profile statement under subsection (11) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

(a) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of

any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(13) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (10) or (11), appeal to the Minister whose decision shall be final.

(14) If —

- (a) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or
- (b) an application to subscribe for or purchase units in a collective investment scheme is accepted, or units in a collective investment scheme are issued or sold, before a prospectus and, where applicable, profile statement, in respect of the units has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

- (i) the issue, circulation or distribution of the prospectus or profile statement;
- (ii) the acceptance of the application to subscribe for or purchase the units; or
- (iii) the issue or sale of the units,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(14A) For the purposes of subsections (10)(a) and (11)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

(15) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide for penalties not exceeding a fine of \$50,000.

Requirement for product highlights sheet, where relevant

296A.—(1) No person shall make an offer of units in a collective investment scheme, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

(a) that complies with such requirements as may be prescribed by the Authority by regulations made under section 341; and

(b) a copy of which is lodged with the Authority.

(2) No person shall publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of units in a collective investment scheme or proposed collective investment scheme, being an offer that

is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 296, if the document resembles or may otherwise be confused with a product highlights sheet, unless he is required to do so —

(a) under any written law or rule of law, or by any court, in Singapore;

(b) under the laws and practices of, or by any court in, any foreign jurisdiction; or

(c) by any listing rules or other requirements of any securities exchange, futures exchange, overseas securities exchange or overseas futures exchange.

(3) The Authority may, for public information, publish —

(a) a product highlights sheet lodged with the Authority under this section; and

(b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Without prejudice to section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons, any prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(6) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any person, prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may specify by notice in writing.

(7) It shall not be necessary to publish any exemption granted under subsection (6) in the *Gazette*.

(8) Every person who is granted an exemption under subsection (5), or who wishes to rely on an exemption granted under that subsection, shall satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

(9) Every person who is granted an exemption under subsection (6), or who wishes to rely on an exemption granted under that subsection, shall, for the duration of the exemption, satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

(10) Any person who contravenes subsection (8) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

296AB.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from all or any of the requirements in section 296A, subject to such conditions or restrictions as may be determined by the Authority.

(2) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any person from all or any of the requirements in section 296A, subject to such conditions or restrictions as the Authority may specify by notice in writing.

(3) The Authority may at any time add to, vary or revoke any condition or restriction imposed under subsection (1) or (2).

(4) Any person who contravenes any condition or restriction imposed under subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Stop order for prospectus and profile statement

297.—(1) If a prospectus has been registered and —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under section 296;
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by an order in writing (referred to in this section as a stop order) served on the person making the offer of units in a collective investment scheme to which the prospectus relates, direct that no or no further units in the scheme be issued or sold.

(2) If a profile statement has been registered and —

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
- (b) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any

information that is prohibited, by virtue of requirements prescribed under section 296;

(c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or

(d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by an order in writing (referred to in this section as a stop order) served on the person making the offer of units in a collective investment scheme to which the profile statement relates, direct that no or no further units in the scheme be issued or sold.

(2A) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the units in a collective investment scheme to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on an approved securities exchange and trading in them has commenced.

(3) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

(a) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(4) Where applications for units in a collective investment scheme have been made prior to the service of a stop order, and —

(a) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —

(i) where units in the scheme have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled; or

(ii) where units in the scheme have been issued to the applicants, the issue of the units shall be deemed to be void,

and the person making the offer of units in the scheme shall, within 7 days from the date of the stop order, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to that person, its agent, or any person through whom the applicant has applied for the units; or

(b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by notice in writing issue such directions to the person making the offer of units in the scheme as it deems fit, including a direction that the person provide the applicants with an option, on such terms as the Authority may approve, to obtain from that person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(5) In determining whether to issue a direction under subsection (4) to the person making the offer of units in the collective investment scheme to refund the contributions of the applicants, the Authority shall consider whether the responsible person for the scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

- (a) whether a significant amount of the contributions of the participants has been invested;
- (b) the liquidity of the property of the scheme; and
- (c) the penalties, if any, payable for liquidating the property.

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

(7) If the Authority is of the opinion that any delay in serving a stop order pending the hearing required under subsection (3) is not in the interests of the public, the Authority may, without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, serve an interim stop order on such person directing that no or no further units in a collective investment scheme to which the prospectus or profile statement relates be issued or sold.

(8) An interim stop order shall, unless revoked, be in force —

- (a) in a case where —
 - (i) it is served during a hearing under subsection (3); or
 - (ii) a hearing under subsection (3) is commenced while it is in force, until the Authority makes an order under subsection (1) or (2); or
- (b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(9) Subsection (4) shall not apply where only an interim stop order has been served.

(10) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

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

(12) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

Lodging supplementary document or replacement document

298.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the date of registration of the prospectus by the Authority, whichever is earlier, the person making that offer becomes aware of —

- (a) a false or misleading statement in the prospectus or profile statement;
- (b) an omission from the prospectus or profile statement of any information that should have been included in it by requirements prescribed under section 296; or
- (c) a new circumstance that —
 - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
 - (ii) would have been required under this Act to be included in the prospectus or profile statement,

if it had arisen before the prospectus or the profile statement, as the case may be, was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

(2) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the registration of the prospectus by the Authority, whichever is earlier, the person making that offer wishes to update any information in a prospectus or profile statement and he declares in writing to the Authority that none of the situations set out in subsection (1) apply at that time, the person may lodge a supplementary or replacement document with the Authority.

(3) At the beginning of a supplementary document, there shall be —

- (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
- (b) an identification of the prospectus or profile statement it supplements;

- (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and
 - (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.
- (4) At the beginning of a replacement document, there shall be —
 - (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
 - (b) an identification of the prospectus or profile statement it replaces.
- (5) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.
- (6) The person making the offer of units in a collective investment scheme shall take reasonable steps —
 - (a) to inform potential investors of the lodgment of any supplementary document or replacement document under subsection (1); and
 - (b) to make available to them the supplementary document or replacement document.
- (7) For the purposes of the application of this Division to events that occur after the lodgment of a supplementary document —
 - (a) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and
 - (b) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.
- (8) [*Deleted by Act 1/2005*]
- (9) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —
 - (a) where the replacement document is a replacement prospectus, the prospectus in relation to the offer shall be taken to be the replacement prospectus; and
 - (b) where the replacement document is a replacement profile statement, the profile statement in relation to the offer shall be taken to be the replacement profile statement.
- (10) Where, prior to the lodgment of the supplementary document or replacement document under subsection (1), applications have been made under the original prospectus or profile statement for units in a collective investment scheme, the person making the offer of units in the scheme —

(a) shall —

- (i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be; and
- (ii) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document; or

(b) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be.

(11) Any person who contravenes subsection (3), (4), (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

(13) For the purposes of subsection (1)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

Duration of validity of prospectus and profile statement

299.—(1) No person shall make an offer of units in a collective investment scheme, or issue or sell any units in a collective investment scheme, on the basis of a prospectus or profile statement after the expiration of 12 months from the date of registration by the Authority of the prospectus in relation to such offer, issue or sale.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(3) An issue or a sale of units in a collective investment scheme that is made in contravention of subsection (1) shall not, by reason only of that fact, be voidable or void.

Restrictions on advertisements, etc.

300.—(1) If a prospectus is required for an offer, or intended offer of units in a collective investment scheme or proposed collective investment scheme, a person shall not —

- (a) advertise the offer or intended offer; or
- (b) publish a statement that —
 - (i) directly or indirectly refers to the offer or intended offer; or
 - (ii) is reasonably likely to induce people to subscribe for or purchase the units,

unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —

- (a) indirectly refers to an offer or intended offer; or
- (b) is reasonably likely to induce people to subscribe for or purchase units in a collective investment scheme,

regard shall be had to whether the statement —

- (i) forms part of the normal advertising of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and
- (ii) is likely to encourage investment decisions to be made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(2A) Notwithstanding subsection (3A), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 305(5) and persons to whom an offer referred to in section 305(2) is to be made without contravening subsection (1), if —

- (a) the front page of the preliminary document contains —
 - (i) the following statement:

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.”;
 - (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and
 - (iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the preliminary document to purchase or subscribe for any units in the collective investment scheme to which the preliminary document relates;
- (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of units in

the collective investment scheme to which the preliminary document relates, or the acceptance of such an offer by any person; and

- (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

(2B) Notwithstanding subsection (3A), a person does not contravene subsection (1)

(a) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 305(5) or persons to whom an offer referred to in section 305(2) is to be made; or

(b) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of units in a collective investment scheme, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme in order to enable the person to carry on the regulated activity of dealing in capital market products in respect of units in a collective investment scheme, or to provide any financial advisory service, in relation to the units in the collective investment scheme:

(i) a person licensed under this Act in respect of dealing in capital market products in respect of units in a collective investment scheme;

(ii) an exempt person;

(iii) a person who is a representative in respect of dealing in capital market products in respect of units in a collective investment scheme under this Act;

(iv) a representative of an exempt person;

(v) a person licensed under the Financial Advisers Act (Cap. 110) in respect of marketing of collective investment schemes;

(vi) an exempt financial adviser;

(vii) a person who is a representative in respect of marketing of collective investment schemes under the Financial Advisers Act; or

(viii) a representative of an exempt financial adviser.

~~Notwithstanding subsection (3A), a person does not contravene subsection (1) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material~~

~~(a) on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 305(5) or persons to whom an offer referred to in section 305(2) is to be made;~~

~~or~~

~~(b) on matters contained in the prospectus or profile statement which has been lodged with the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme to market the scheme under the Financial Advisers Act (Cap. 110):~~

~~(i) a person licensed under that Act in respect of marketing of collective investment schemes;~~

~~(ii) an exempt financial adviser;~~

~~(iii) a person who is a representative in respect of marketing of collective investment schemes under that Act;~~

~~(iv) a representative of an exempt financial adviser.~~

~~(2C) In subsection (2B), “exempt financial adviser” and “representative” have the same meanings as in section 2(1) of the Financial Advisers Act (Cap. 110).~~

(3) For the avoidance of doubt, a person may disseminate either or both of the following without contravening subsection (1):

(a) a prospectus or profile statement that has been registered by the Authority under section 296;

(b) a product highlights sheet in respect of which section 296A(1)(a) and (b) has been complied with. ~~For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 296 without contravening subsection (1).~~

(3A) Before a prospectus or profile statement is registered, an advertisement or a publication does not contravene subsection (1) if it contains only the following:

- (a) a statement that identifies the person making the offer, the responsible person for the collective investment scheme and, where the collective investment scheme is not a corporation, the collective investment scheme;
- (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
- (c) a statement that anyone wishing to acquire the units in the collective investment scheme will need to make an application in the manner set out in the prospectus or profile statement;
- (d) a statement on how to obtain, or arrange to receive, a copy of the prospectus or profile statement; and
- (e) the investment focus of the collective investment scheme.

(3B) To satisfy subsection (3A), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the information referred to in paragraphs (d) and (e).

(3C) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if it complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

- (4) An advertisement or publication does not contravene subsection (1) if it —
- (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved securities exchange, ~~futures exchange~~ or overseas ~~securities~~ exchange, made by any person, provided that the disclosure, notice or report complies with such requirements as may be prescribed by the Authority;
 - (aa) consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, provided that the notice or report complies with such requirements as may be prescribed by the Authority, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;
 - (b) consists solely of a report about the collective investment scheme or proposed collective investment scheme that is issued pursuant to this Act and the Code on Collective Investment Schemes;
 - (ba) consists solely of a statement made by the person making the offer or the responsible person that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;
 - (c) is a news report, or a genuine comment, by a person other than a person referred to in paragraph (d)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to —
 - (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;
 - (ii) a disclosure, notice or report referred to in paragraph (a);
 - (iii) a notice, report, presentation, meeting, proposed meeting, general meeting or proposed general meeting referred to in paragraph (aa); ~~or~~
 - (iv) a report referred to in paragraph (b); or
 - (v) a product highlights sheet;
 - (d) is a report about the units in the collective investment scheme which are the subject of the offer or intended offer, published by someone who is not —
 - (i) the person making the offer, the responsible person for the scheme, its agent or distributor;
 - (ii) a director or an equivalent person of the person making the offer or the responsible person for the scheme;
 - (iii) a person who has an interest in the success of the issue or sale of the units; or

- (iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);
- (e) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or
- (f) is a publication made by the person making the offer or the responsible person for the scheme solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —
 - (i) an earlier news report or a genuine comment referred to in paragraph (c); or
 - (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (5),

provided that the first-mentioned publication does not contain any material information that is not included in the prospectus.

- (5) A person does not contravene subsection (1) if —
 - (a) he publishes an advertisement or publication in the ordinary course of a business of —
 - (i) publishing a newspaper, periodical or magazine; or
 - (ii) broadcasting by radio, television, or any other means of broadcasting or communication; and
 - (b) he did not know, and had no reason to suspect, that its publication would constitute a contravention of subsection (1).

(6) Subsection (4)(c) and (d) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(7) Any person who contravenes subsection (1) or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.
~~Any person who contravenes subsection (1) or who knowingly authorised or permitted the publication or dissemination in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.~~

- (8) This section does not affect any liability that a person has under any other law.

(9) The Authority may exempt any person or class of persons from this section, subject to such conditions as may be determined by the Authority.

(10) Any person who contravenes any of the conditions under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(11) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(12) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

(13) In subsection (2B) —

“exempt financial adviser” and “financial advisory service” have the same meanings as in section 2(1) of the Financial Advisers Act;

“representative” —

(a) in relation to dealing in capital market products in respect of units in a collective investment scheme under this Act or an exempt person, has the same meaning as in section 2(1); or

(b) in relation to marketing of collective investment schemes under the Financial Advisers Act or an exempt financial adviser, has the same meaning as in section 2(1) of that Act.

Issue of units where prospectus indicates application to list on approved securities exchange

301.—(1) Where a prospectus states or implies that application has been or will be made for permission for the units in a collective investment scheme offered thereby to be listed for quotation on any approved securities exchange, and —

(a) the permission is not applied for in the form required by the approved securities exchange within 3 days from the date of the issue of the prospectus; or

(b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the approved securities exchange,

then —

(i) any issue whenever made of units made on an application in pursuance of the prospectus shall be void; and

(ii) any person who continues to issue such units after the period specified in paragraph (a) or (b) shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), applications for units in the collective investment scheme have been made and —

(a) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —

(i) in a case where units in the scheme have not been issued to the applicants, the responsible person for the scheme shall treat such applications as having been withdrawn; or

(ii) in a case where units in the scheme have been issued to the applicants, the issue of the units shall be deemed to be void,

and the responsible person shall within 7 days after the period specified in subsection (1)(a) or (b), whichever is applicable, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units; or

(b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by notice in writing issue such directions to the responsible person for the scheme as it deems fit, including a direction that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2)(b) to the responsible person to refund the contributions of the applicants, the Authority shall consider whether the responsible person for the collective investment scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

(a) whether a significant amount of the contributions of the participants has been invested;

(b) the liquidity of the property of the scheme; and

(c) the penalties, if any, payable for liquidating the property.

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

(5) Any responsible person to whom a notice is given under subsection (2) shall comply with such direction as may be contained in the notice.

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

(7) All moneys received from applicants as payment for the units, including contributions to the scheme and charges which the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units, shall be kept in a separate bank account so long as the responsible person for the collective investment scheme may become liable to repay it under subsection (2).

(8) Any responsible person for a scheme which is not in compliance with subsection (7) and, where the scheme is a corporation, every officer thereof, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(9) Where the approved securities exchange has, within the period specified in subsection (1)(b), granted permission subject to compliance with such requirements as may be specified by the approved securities exchange, permission shall be deemed to have been granted by the approved securities exchange if —

(a) in a case where the responsible person for the scheme is a corporation, the directors of the corporation; or

(b) in a case where the responsible person for the scheme is not a corporation, such persons as may be required by the approved securities exchange,

have given to the approved securities exchange an undertaking in writing to comply with the requirements of the approved securities exchange.

(10) Any person who fails to comply with any undertaking given to an approved securities exchange under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(11) A person shall not issue a prospectus inviting persons to subscribe for or purchase units in a collective investment scheme if it includes —

(a) a false or misleading statement that permission has been granted for those units to be listed for quotation on, dealt in or quoted on any approved securities exchange; or

(b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation on, dealing in or quoting the units on any approved securities exchange, or to any requirements of an approved securities exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the approved securities exchange

within 3 days from the date of issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(13) Where a prospectus contains a statement to the effect that the constituent documents for the collective investment scheme comply, or have been drawn so as to comply, with the requirements of any approved securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of subsection (11)(b) to be a prospectus that includes a statement that application has been, or will be, made for permission for the units to which the prospectus relates, to be listed for quotation on the approved securities exchange.

Application of provisions relating to securities investments

302.—(1) Sections 247, 249, 249A, 252, 253, 254 and 255 shall, with the necessary modifications, apply in relation to an offer of units in a collective investment scheme as they apply in relation to an offer of investments securities in Division 1 of this Part.

(2) For the purposes of subsection (1), references in those sections to investments securities and to a person subscribing for, purchasing or acquiring investments securities shall be read as references to units in a collective investment scheme and to a person subscribing for, purchasing or acquiring such units, respectively.

(3) For the purposes of subsection (1), references in sections 253 and 254 to an offer referred to in section 280 shall be read as a reference to an offer referred to in section 305C.

(4) For the purposes of subsection (1), references in sections 249, 249A, 253 and 254 to the issuer shall be read as a reference to the responsible person.

Subdivision (4) — Exemptions

Issue or transfer for no consideration

302A.—(1) Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (other than an offer of an option to subscribe for or purchase such units) if no consideration is or will be given for the issue or transfer of the units.

(2) Subdivisions (2) and (3) of this Division shall not apply to an offer of an option to subscribe for or purchase units in a collective investment scheme if —

- (a) no consideration is or will be given for the issue or transfer of the option; and
- (b) no consideration is or will be given for the underlying units on the exercise of the option.

Small offers

302B.—(1) Subdivisions (2) and (3) of this Division shall not apply to personal offers of units in a collective investment scheme by a person if —

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed —
 - (i) \$5 million (or its equivalent in a foreign currency); or
 - (ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);
- (b) in respect of each offer, the person making the offer gives the person to whom he makes the offer —
 - (i) the following statement in writing:

“This offer is made in reliance on the exemption under section 302B(1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority.”; and
 - (ii) a notification in writing that the units to which the offer (referred to in this sub-paragraph as the initial offer) relates shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —
 - (A) in compliance with Subdivisions (2) and (3) of this Division;
 - (B) in reliance on subsection (8)(c) or any other exemption under any provision of this Subdivision (other than this subsection); or
 - (C) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under this subsection;
- (c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the following persons:
 - (i) the holder of a capital markets services licence to deal in capital market products in respect of units in a collective investment scheme~~securities~~;
 - (ii) an exempt person in respect of dealing in ~~securities~~capital market products in respect of units in a collective investment scheme;
 - (iii) a person licensed under the Financial Advisers Act (Cap. 110) in respect of marketing of collective investment schemes;

- (iv) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act; or
 - (v) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital market products in respect of units in a collective investment schemes or marketing of collective investment schemes, or who is exempted therefrom in respect of such dealing or marketing; and
- (e) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —
- (i) the prospectus has expired pursuant to section 299; or
 - (ii) the person making the offer has before making the offer informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection.

(2) For the purposes of subsection (1)(b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of units in a collective investment scheme is one that —

- (a) may only be accepted by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in that offer, having regard to —
 - (i) any previous contact before the date of the offer between the person making the offer and that person;
 - (ii) any previous professional or other connection established before that date between the person making the offer and that person; or
 - (iii) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the offer or any of the persons specified in subsection (1)(d)(i) to (v) that he is interested in offers of that kind.

(4) In determining the amount raised by an offer of units in a collective investment scheme, the following shall be included:

- (a) the amount payable for the units at the time when they are issued or sold;
- (b) if the units are issued partly-paid, any amount payable at a future time if a call is made; and
- (c) if the units carry a right (by whatever name called) to be converted into other units or to acquire other units in a collective investment scheme, any amount

payable on the exercise of the right to convert them into, or to acquire, other units in a collective investment scheme.

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1)(a), each amount raised —

- (a) by that person from any offer of units in the same collective investment scheme; or
- (b) by that person or another person from any offer of ~~securities~~investments which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), section 272A(1) or 282V(1) shall be included.

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of units in a collective investment scheme made by a person acting as an agent of another person shall be treated as an offer made by that other person.

(8) Where units acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the units to another person, Subdivisions (2) and (3) of this Division shall apply to the offer from the first-mentioned person to the second-mentioned person which resulted in that sale, unless —

- (a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);
- (b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units were acquired under the initial offer; or
- (c) such offer is one —
 - (i) that may be accepted only by the person to whom it is made;
 - (ii) that is made to a person who is likely to be interested in the offer having regard to —
 - (A) any previous contact before the date of the offer between the person making the initial offer and that person;
 - (B) any previous professional or other connection established before that date between the person making the initial offer and that person; or
 - (C) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the initial offer or any of the persons specified in subsection (1)(d)(i) to (v) that he is interested in offers of that kind;

(iii) in respect of which the first-mentioned person has given the second-mentioned person —

(A) the following statement in writing:

“This offer is made in reliance on the exemption under section 302B(8)(c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority.”; and

(B) a notification in writing that the units being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in subsection (1)(d)(i) to (v).

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(c)(iii).

(10) In subsections (1)(c) and (8)(c)(iv), “advertisement” means —

(a) a written or printed communication;

(b) a communication by radio, television or other medium of communication; or

(c) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

(i) a document —

(A) purporting to describe the units in a collective investment scheme being offered; and

- (B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units being offered;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved securities exchange, ~~futures exchange~~ or overseas securities exchange, which is made by any person; or
- (iii) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting.

Private placement

302C.—(1) Subdivisions (2) and (3) of this Division shall not apply to offers of units in a collective investment scheme that are made by a person if —

- (a) the offers are made to no more than 50 persons within any period of 12 months;
- (b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B(1)(d)(i) to (v); and
- (d) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —
 - (i) the prospectus has expired pursuant to section 299; or
 - (ii) the person making the offer has before making the offer —
 - (A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and
 - (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(a).

(3) In determining whether offers of units in a collective investment scheme by a person are made to no more than the applicable number of persons specified in subsection (1)(a) within a period of 12 months, each person to whom —

- (a) an offer of units in the same collective investment scheme is made by the first-mentioned person; or

- (b) an offer of ~~securities~~investments is made by the first-mentioned person or another person where such offer is a closely related offer,

if any, within that period in reliance on the exemption under this section, section 272B or 282W shall be included.

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

- (a) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units which are the subject of the offer;
- (b) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the units which are the subject of the offer;
- (c) an offer of units in a collective investment scheme to 2 or more persons who will own the units acquired as joint owners shall be treated as an offer to a single person;
- (d) an offer of units in a collective investment scheme to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;
- (e) offers of units in a collective investment scheme made by a person as an agent of another person shall be treated as offers made by that other person;
- (f) where an offer of units in a collective investment scheme is made to a person with a view to another person acquiring an interest in those units by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1)(a); and
- (g) where —
 - (i) an offer of units in a collective investment scheme is made to a person in reliance on the exemption under subsection (1) with a view to those units being subsequently offered for sale to another person; and
 - (ii) that subsequent offer —
 - (A) is not made in reliance on an exemption under any provision of this Subdivision; or
 - (B) is made in reliance on an exemption under subsection (1) or section 305C,

both persons shall be counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1)(a).

(6) In subsection (1)(b), “advertisement” has the same meaning as in section 302B(10).

Offer or invitation made under certain circumstances

303.—(1) Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme if it is made in relation to units in a collective investment scheme (not being such excluded units in a scheme as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on an approved securities exchange, and are traded on the exchange.

(2) Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme if it is an offer to enter into an underwriting agreement relating to units in a collective investment scheme.

Offer made to institutional investors

304. Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme, whether or not they have been previously issued, made to an institutional investor.

First sale of units acquired pursuant to section 304

304A.—(1) Notwithstanding sections 302B, 302C, 303(1) and 305B but subject to subsection (2), where units in a collective investment scheme acquired pursuant to an offer made in reliance on the exemption under section 304 are first sold to any person other than an institutional investor, then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale.

(2) Subsection (1) shall not apply where the units in a collective investment scheme acquired are of the same class as, or can be converted into units of the same class as, other units in the scheme —

(a) in respect of which —

(i) an offer of which has previously been made; or

(ii) ~~in or accompanied by a prospectus~~ the listing for quotation has previously been accompanied by,

an offer information statement, introductory document, unitholders’ circular for a reverse takeover, document issued for the purposes of a trust scheme or other similar document approved by an approved exchange; and

(b) which are listed for quotation on an securities approved exchange.

Offer made to accredited investors and certain other persons

305.—(1) Except to such extent and with such modifications as may be prescribed by the Authority, Subdivisions (2) and (3) of this Division shall not apply to an offer

of units in a collective investment scheme (referred to in this section as a restricted scheme), where the offer is made to a relevant person, if the conditions in subsection (3) are satisfied.

(2) Except to such extent and with such modifications as may be prescribed by the Authority, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (also referred to in this section as a restricted scheme) to a person who acquires the units as principal if the offer is on terms that the units may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities investments or other assets, and if the conditions in subsection (3) are satisfied.

(3) The conditions referred to in subsections (1) and (2) are —

- (a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B(1)(d)(i) to (v); and
- (c) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —
 - (i) the prospectus has expired pursuant to section 299; or
 - (ii) the person making the offer has before making the offer —
 - (A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and
 - (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

(4) [*Deleted by Act 2/2009 wef 29/07/2009*]

(5) In this section —

“advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

- (i) an information memorandum;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an

~~approved securities exchange, futures exchange~~ or overseas securities exchange, which is made by any person; or

- (iii) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;

“information memorandum” means a document —

- (a) purporting to describe the units in a collective investment scheme being offered; and
- (b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units being offered;

“relevant person” means —

- (a) an accredited investor;
- (b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;
- (c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;
- (d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or
- (e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

(6) Notwithstanding any requirement under section 99 or any regulations made thereunder that a person has to deal in ~~securities~~ capital market products in respect of units in a collective investment scheme for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units in a collective investment scheme under section 304 or this section for his own account without complying with such requirement shall be considered an exempt person even though he does not comply with that requirement.

(7) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2).

First sale of units acquired pursuant to section 305

305A.—(1) Notwithstanding sections 302B, 302C, 303(1) and 305B but subject to subsection (5), where units in a collective investment scheme acquired pursuant to an

offer made in reliance on an exemption under section 305 are first sold to any person other than —

- (a) an institutional investor;
- (b) a relevant person as defined in section 305(5); or
- (c) any person pursuant to an offer referred to in section 305(2),

then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale.

(2) Subject to subsection (5), securities of a corporation (other than a corporation that is an accredited investor) —

- (a) the sole business of which is to hold investments; and
- (b) the entire share capital of which is owned by one or more individuals each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any units in a collective investment scheme pursuant to an offer made in reliance on an exemption under section 305, unless —

(i) that transfer —

- (A) is made only to institutional investors or relevant persons as defined in section 305(5); or
- (B) arises from an offer referred to in section 275(1A);

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

(3) Subject to subsection (5), where —

- (a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and
- (b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust shall not be transferred within 6 months after units in a collective investment scheme are acquired for the trust pursuant to an offer made in reliance on an exemption under section 305, unless —

(i) that transfer —

- (A) is made only to institutional investors or relevant persons as defined in section 305(5); or
- (B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities investments or other assets;

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

(4) For the avoidance of doubt, the reference to beneficiaries in subsection (3) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

(5) Subsections (1), (2) and (3) shall not apply where the units in a collective investment scheme acquired are of the same class as other units in the scheme —

(a) in respect of which –

(i) an offer of which has previously been made in or accompanied by a prospectus; or

(ii) the listing for quotation has previously been accompanied by, an offer information statement, introductory document, unitholders' circular for a reverse takeover, document issued for the purposes of a trust scheme or other similar document approved by an approved exchange; and

(b) which are listed for quotation on an securities approved exchange.

Offer made using offer information statement

305B.—(1) Subject to subsection (2), Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme whose units are listed for quotation on an securities approved exchange, whether by means of a rights issue or otherwise, if —

(a) an offer information statement relating to the offer which complies with such form and content requirements as may be prescribed by the Authority is lodged with the Authority; and

(b) either —

(i) the offer is made in or accompanied by the offer information statement referred to in paragraph (a); or

(ii) all the conditions in subsection (2A) are satisfied.

(2) Subsection (1) shall only apply to an offer of units referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

(2A) The conditions referred to in subsection (1)(b)(ii) are —

(a) the offer is made using any automated teller machine or such other electronic means as may be prescribed by the Authority;

(b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

(ii) that he should read the offer information statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase units in the collective investment scheme; and

(c) the person making the offer complies with such other requirements as the Authority may prescribe.

(3) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.

(4) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as may be prescribed by the Authority shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4) —

(a) a reference in sections 249 and 249A to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and

(b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus shall be read as a reference to any information prescribed under subsection (1)(a).

(6) Where the written consent of an expert is required to be given under section 249 (as applied in relation to an offer information statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

(7) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

Making offer using automated teller machine or electronic means

305C.—(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of units in a collective investment scheme using —

(a) any automated teller machine; or

(b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 296(1)(a) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 296(2) that the offer be made in or accompanied by a profile statement in respect of the offer.

(2) For the avoidance of doubt, a prospectus which complies with all other requirements of section 296(1)(a) or, where applicable, a profile statement which complies with all other requirements of section 296(2) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and

(b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit his application to subscribe for or purchase units.

Power of Authority to exempt

306.—(1) The Authority may exempt any person or class of persons, subject to such conditions as the Authority may determine, from complying with all or any of the provisions of this Division or any regulations made thereunder in relation to an offer in respect of any unit or class of units.

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

(3) This Division shall not apply in the case of the sale of any unit in a collective investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy in the ordinary course of the realisation of assets for the purposes of the sale.

Revocation of exemption

307.—(1) Where the Authority considers that it is necessary in the interest of the public or for the protection of investors, it may revoke any exemption under this Subdivision (including an exemption granted under section 306 (1)), subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation under this section shall be final and conclusive and there shall be no appeal therefrom.

Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act

308. For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

Division 3 — Securities Investments Hawking

Investments Securities hawking prohibited

309.—(1) No person shall make an offer to any person of investments securities for subscription or purchase, or an invitation to any person to subscribe for or purchase investments securities, in the course of, or arising from, an unsolicited meeting with that other person.

(2) Subsection (1) shall not apply to any person who makes an offer or invitation in respect of investments securities that does not need a prospectus by virtue of section 274, 275, 304 or 305.

(3) The Authority may exempt —

(a) any person or class of persons; or

(b) any class or description of investments securities,

from compliance with subsection (1), subject to such conditions as may be determined by the Authority.

(4) Every person who acts, incites, causes or procures any person to act in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) Where any person is convicted of having made an offer or invitation in contravention of subsection (1), the court before which he is convicted may order that any contract made as a result of the offer or invitation shall be void and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any investments securities.

(6) An appeal against any order made under subsection (5) and any consequential directions shall lie to the High Court.

(7) In this section —

(a) “investments securities” has the same meaning as in section 239 and also includes the investments securities of a corporation, whether the corporation is in existence or is to be formed;

(b) a reference to an offer or invitation in respect of investments securities for subscription or purchase shall be construed as including an offer or invitation in respect of investments securities by way of barter or exchange.

Division 4 — Capital Market Products

Interpretation of this Division

309A.—(1) In this Division, unless the context otherwise requires —

“issuer” means —

- (a) in relation to an offer of units in a collective investment scheme, the responsible person for the collective investment scheme;
- (b) in relation to an offer of any contract or arrangement in connection with leveraged foreign exchange trading, the holder of a capital markets services licence for leveraged foreign exchange trading that is the counterparty to that contract or arrangement;
- (c) in relation to an offer of any other capital market products, the entity that issues or will issue the capital market products being offered;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of any capital market products;

“relevant person” means —

- (a) a holder of a capital markets services licence;
- (b) a person who is exempted under section 99(1)(a) or (b) from the requirement to hold a capital markets services licence;
- (c) a person licensed under the Financial Advisers Act (Cap. 110) in respect of advising on any investment product;
- (d) a person who is exempted under section 23(1)(a), (b), (c), (d) or (e) of the Financial Advisers Act from holding a financial adviser’s licence;
- (e) such other person as may be prescribed by the Authority by regulations made under section 341; or
- (f) a representative of any person referred to in paragraph (a), (b), (c), (d) or (e).

(2) For the purposes of this Part, a person makes an offer of any capital market products if, and only if, as principal —

- (a) he makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those capital market products by him or another person with whom he has made arrangements for that issue or sale; or
- (b) he invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those capital market products by him or another person with whom he has made arrangements for that issue or sale.

(3) In subsection (2), “sale” includes any disposal for valuable consideration.

(4) For the avoidance of doubt, the obligations imposed by this Division in relation to any capital market products are in addition to the obligations imposed under Divisions 1, 1A, 2 and 3 in relation to those capital market products.

Obligation of issuer to determine, and to notify approved exchange and relevant person of, classification of capital market products

309B.—(1) No issuer shall make an offer of any capital market products unless —

- (a) the issuer has determined the classification of those capital market products;
- (b) where those capital market products are or will be listed for quotation or quoted on a market operated by an approved exchange, the issuer has notified the approved exchange in writing of the classification of those capital market products; and
- (c) where those capital market products are or will be offered through any relevant person, the issuer has notified that relevant person in writing of the classification of those capital market products.

(2) No relevant person shall make an offer of any capital market products unless the relevant person has received a notification under subsection (1)(c) in respect of those capital market products.

(3) Where, after any notification has been given under subsection (1)(b) or (c) or this subsection in respect of any capital market products, there is a change in the classification of those capital market products, the issuer of those capital market products shall, within such time as may be prescribed by the Authority by regulations made under section 341 —

- (a) if those capital market products are or will be listed for quotation or quoted on an approved exchange, notify the approved exchange in writing of the new classification of those capital market products; and
- (b) if those capital market products are or will be offered through any relevant person, notify that relevant person in writing of the new classification of those capital market products.

(4) Without prejudice to section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(5) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any person from any provision of this section, subject to such conditions or restrictions as the Authority may specify by notice in writing.

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

(7) Every person who is granted an exemption under subsection (4) shall satisfy every condition or restriction imposed on him under that subsection.

(8) Every person who is granted an exemption under subsection (5) shall satisfy every condition or restriction imposed on him under that subsection.

(9) Any person who contravenes subsection (1), (2), (3), (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the

case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) In this section —

“classification”, in relation to any capital market products, means the classification of the capital market products as either of the following:

(a) prescribed capital market products;

(b) capital market products other than prescribed capital market products;

“prescribed capital market products” means any capital market products that belong to any class of capital market products that is prescribed by the Authority, by regulations made under section 341, for the purposes of this definition.

Use of term “capital protected” or “principal protected”

309C.—(1) No person shall, when describing or referring to any capital market products which are, will be or have been the subject of an offer or intended offer, do either or both of the following:

(a) use the term “capital protected” or any of its derivatives in any language in the name or description or any representation of those capital market products, or within any prospectus relating to those capital market products;

(b) use the term “principal protected” or any of its derivatives in any language in the name or description or any representation of those capital market products, or within any prospectus relating to those capital market products.

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

Use of term “product highlights sheet”

309D.—(1) No person shall, when describing or referring to any publication in respect of any offer or intended offer of any capital market products, use the term “product highlights sheet” or any of its derivatives in any language in the name or description or any representation of that publication, unless —

(a) that publication is a product highlights sheet —

(i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240; and

(ii) in respect of which section 240AA(1)(a) and (b) has been complied with;

(b) that publication is a product highlights sheet —

(i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296; and

(ii) in respect of which section 296A(1)(a) and (b) has been complied with;

(c) that person belongs to any class of persons declared by the Authority, by order published in the Gazette, to be a class of persons who may, when describing or referring to any publication in respect of any offer or intended offer of such capital market products as the Authority may specify in the order, use that term or any of its derivatives in any language in the name or description or any representation of that publication; or

(d) the Authority has given consent in writing to that person to use that term or any or any of its derivatives in any language, when describing or referring to any publication in respect of any offer or intended offer of such capital market products as the Authority may specify in writing, in the name or description or any representation of that publication.

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

PART XIV

APPEALS

[...]

Appeal Advisory Committees

311.—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 310, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for re-appointment.

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing relating to the ~~securities, futures or derivatives~~ capital markets products industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), of a document or material containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document or material which is in his possession.

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

(a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and

(b) in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

[...]

PART XV
MISCELLANEOUS

[...]

Power of Authority to publish information

322.—(1) The Authority may, where it thinks it necessary or expedient in the interest of the public or section of the public or for the protection of investors and in such form or manner as it thinks fit, publish —

- (a) any information relating to an approved exchange, a recognised market operator, an exempt market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, an exempt person, a representative, or an approved trustee for a collective investment scheme as defined in section 289; or
- (b) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may publish information relating to —

- (a) the lapsing, revocation or suspension of the approval, licence or exemption granted to any person referred to in subsection (1);
- (b) the making of a prohibition order against any person referred to in subsection (1);
- (c) the reprimand of any relevant person under section 334;
- (d) the removal of an officer of any person referred to in subsection (1);
- (e) the composition of any offence —
 - (i) under this Act committed by any person; or
 - (ii) under any other law (whether of Singapore or any territory or country outside Singapore) involving a person referred to in subsection (1);
- (f) any civil or criminal proceedings brought —
 - (i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or
 - (ii) under any other law, whether of Singapore or any territory or country outside Singapore, against any person referred to in subsection (1) and the outcome of such proceedings, including any settlement, whether in or out of court;

- (g) any disciplinary proceedings brought against any person referred to in subsection (1), by the Authority, ~~a securities exchange, a futures exchange~~ an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house and the outcome of such proceedings; and

[Act 34 of 2012 wef 01/08/2013]

- (h) any other action as may have been taken by the Minister, the Authority, a ~~securities exchange, a futures exchange~~ an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house against any person referred to in subsection (1).

[...]

Power of court to prohibit payment or transfer of moneys, securities capital markets products, etc.

324.—(1) A court may, on an application by the Authority, make one or more of the orders referred to in subsection (1A), where —

- (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;
- (b) a criminal proceeding has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph (referred to in this section as the relevant person) is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of penalties, damages or compensation or otherwise, or to account for any ~~securities, futures contracts, contracts in connection with leveraged foreign exchange trading~~ capital markets product, or other property.

(1A) The orders of court that may be made under subsection (1) are as follows:

- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to the relevant person, or to another person at the direction or request of the relevant person;
- (b) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, securities capital markets products ~~futures contracts, contracts in connection with leveraged foreign exchange trading~~, or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying, transferring or otherwise parting with possession of all or any of the moneys, ~~securities, futures contracts, contracts in connection with leveraged foreign exchange~~

~~trading~~capital markets products, or other property, to the relevant person, or to another person at the direction or request of the relevant person;

- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;
- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of ~~securities~~capital markets products, or documents of title to ~~securities, futures contracts, contracts in connection with leveraged foreign exchange trading~~capital markets products, or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of ~~securities~~capital markets products from a register in Singapore to a register outside Singapore);
- (e) an order appointing —
 - (i) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of the relevant person; or
 - (ii) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of the relevant person;
- (f) where the relevant person is an individual, an order requiring the relevant person to deliver up to the court his passport and such other documents as the court thinks fit;
- (g) where the relevant person is an individual, an order prohibiting the relevant person from leaving Singapore without the consent of the court.

(2) Where an application is made to the court for any order referred to in subsection (1A), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

(3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

(4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

(5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

(6) Any person who contravenes an order or interim order made by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) Subsection (6) shall not affect the powers of the court in relation to the punishment for contempt of court.

Power of court to make certain orders

325.—(1) Where —

- (a) on the application of the Authority, it appears to the court that a person —
 - (i) has committed an offence under this Act;
 - (ii) has contravened any condition or restriction of a licence, or the business rules of ~~a securities exchange, a futures exchange~~ an approved exchange, a licensed trade repository or an approved clearing house, or the listing rules of ~~a securities exchange~~ an approved exchange; or
 - (iii) is about to do an act with respect to any dealing in securities or trading in futures contracts capital markets products that, if done, would be such an offence or contravention;
- (b) on the application of ~~a securities exchange~~ an approved exchange, it appears to the court that a person has contravened the business rules or listing rules of the ~~securities exchange~~ approved exchange;
- (c) ~~on the application of a futures exchange, it appears to the court that a person has contravened the business rules of the futures exchange;~~
- (d) on the application of an approved clearing house, it appears to the court that a person has contravened the business rules of the approved clearing house; or
- (e) on the application of a licensed trade repository, it appears to the court that a person has contravened the business rules of the licensed trade repository,

the court may, without prejudice to any orders it would be entitled to make otherwise than under this section, make one or more of the following orders:

- (i) in the case of a persistent or continuing breach of this Act, or of any condition or restriction of a licence, or of any business rule of ~~a securities exchange, a futures exchange~~ an approved exchange, a licensed trade repository or an approved clearing house, or any listing rule of ~~a securities exchange~~ an approved exchange, an order restraining a person from carrying on business to deal in ~~securities or trade in futures contracts~~ capital markets products, or acting as a representative of such a person, or from holding himself out as so carrying on business or so acting;
- (ii) an order restraining a person from ~~acquiring, disposing of or otherwise dealing with any securities or trading in any futures contracts~~ capital markets product that ~~are~~ is specified in the order;
- (iii) an order appointing a receiver of the property of the holder of a capital markets services licence to deal in ~~securities or trade in futures~~

~~contracts~~ capital markets products or of property that is held by such a holder for or on behalf of another person whether on trust or otherwise;

- (iv) an order declaring a contract relating to any dealing in ~~securities or trading in futures~~ contracts capital markets products to be void or voidable;
- (v) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
- (vi) any ancillary order deemed to be desirable in consequence of the making of any of these orders.
- (vii) an order restraining the exercise of any voting or other rights attached to any capital markets product that is specified in the order.

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order of the court under subsection (1) as a receiver of the property of the holder of a capital markets services licence to deal in ~~securities or trade in futures~~ contracts capital markets products —

- (a) may require the holder to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;
- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the court may specify in the order.

(4) For the purposes of subsections (1) and (3), “property”, in relation to the holder of a capital markets services licence to deal in ~~securities or trade in futures~~ contracts capital markets products, includes moneys, ~~securities, futures~~ contracts capital markets products and documents of title to ~~securities~~ capital markets products or other property entrusted to or received on behalf of any other person by the holder or another person in the course of or in connection with a business of dealing in ~~securities or trading in futures~~ contracts capital markets products carried on by the holder.

(5) Any person who, without reasonable excuse, contravenes —

- (a) an order made under subsection (1); or
- (b) a requirement of a receiver appointed by order of the court under subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Subsection (5) shall not affect the powers of the court in relation to the punishment for contempt of court.

(7) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[...]

Duty not to furnish false statements to ~~securities exchange, futures exchange~~ an approved exchange, licensed trade repository, approved clearing house, recognised clearing house and Securities Industry Council

330.—(1) Any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to any ~~securities exchange, futures exchange~~ approved exchange, licensed trade repository, approved clearing house or recognised clearing house or any officers thereof relating to —

- (a) ~~dealing in securities, trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading~~ capital markets products or financial instruments;
- (b) the enforcement of the business rules of a ~~securities exchange, a futures exchange~~ an approved exchange, a licensed trade repository or an approved clearing house or the listing rules of a ~~securities exchange~~ an approved exchange;
- (c) the affairs of an entity or a business trust;
- (d) a collective investment scheme;
- (e) the affairs of the trustee-manager of a registered business trust; or
- (f) a registered business trust which is managed and operated by the trustee-manager of the registered business trust,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Any person who, with intent to deceive, makes or furnishes or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to the Securities Industry Council or any of its officers, relating to any matter or thing required by the Securities Industry Council in the exercise of its functions under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) In subsection (1)(c), the reference to affairs of an entity or a business trust shall —

- (a) in the case of an entity which is a corporation, be construed as including a reference to the matters referred to in section 2(2); and

(b) in the case of —

- (i) an entity which is not a corporation; or
- (ii) a business trust,

be construed as a reference to such matters as may be prescribed by the Authority.

[...]

Offences by officers

332.—(1) Any person, being an officer of an approved holding company, a ~~securities exchange, a futures exchange~~ an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house or a holder of a capital markets services licence to carry on business in any regulated activity, who fails to take all reasonable steps to secure —

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted under this Act,

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

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the defendant to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

[SIA, s. 107]

[...]

Power of Authority to reprimand for misconduct

334.—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interest of the public, or a section of the public or for the protection of investors, reprimand the relevant person.

(2) In this section —

“misconduct” means —

- (a) the contravention of —
 - (i) any provision of this Act;
 - (ii) any condition or restriction imposed under this Act;
 - (iia) any direction made by the Authority under this Act;

(iii) any code, guideline, policy statement or practice note issued under section 321; or

(iv) any business rules of ~~a securities exchange, a futures exchange~~ an approved exchange, a licensed trade repository or an approved clearing house, or the listing rules of ~~a securities exchange~~ an approved exchange;

(b) the failure by an officer of a relevant person to discharge any duty or function of his office; or

(c) the commission of an offence under section 331 or 332(1);

“officer” —

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“relevant person” means an approved exchange, a recognised market operator, an exempt market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, an exempt person, an approved trustee for a collective investment scheme as defined in section 289, or any employee, officer, partner or representative thereof.

[...]

Power to make regulations giving effect to treaty, etc., relating to ~~securities or futures~~ capital markets products

338.—(1) Without prejudice to the generality of section 341, the Authority may make regulations prescribing the matters necessary or expedient to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the ~~securities, futures or derivatives~~ capital markets products industry, to which Singapore or the Authority is a party.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for —

(a) exemptions from the requirements relating to licensing, approval or registration of any person, the recognition of recognised market operators or the lodgment or registration of any document under this Act;

- (b) exemptions from any requirement in Part XIII;
- (c) the application of this Act with such modifications as may be necessary;
- (d) the revocation or withdrawal of any exemption granted; and
- (e) the variation of any condition or restriction imposed in connection with the granting of any exemption under this Act.

[...]

Regulations

341.—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

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

- (a) the criteria for authorisation or recognition of collective investment schemes and the constitution, operation, management and offer of such schemes including but not limited to the powers and duties of the managers, trustees or representatives and the rights and obligations of the participants of the schemes;

- (b) the financial requirements and other criteria that a public company must fulfill for it to be considered for approval as a trustee;

- (c) applications for capital markets services licences to carry on business in any regulated activity and matters incidental thereto;

(ca) the type of capital markets products in respect of which a regulated activity may be carried out by persons holding a capital markets services licence;

- (d) the activities of, and standards to be maintained by persons holding a capital markets services licence to carry on business in any regulated activity in respect of any type of capital markets product and their representatives of such persons, including the manner, method and place of soliciting business by the holder of the licence and their representatives, and the conduct of such solicitation;

(e) [*Deleted by Act 16/2003*]

(f) the conditions for the conduct of business on any securities exchange, futures exchange approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house or recognised clearing house;

- (g) the form, content distribution and publication of written, printed or visual material and advertisements that may be distributed or used by a person in respect of any regulated activity, including advertisements offering the services of persons holding a capital markets services licence or offering capital markets products for sale;

- (h) the particulars to be recorded in the profit and loss accounts and balance-sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of persons holding a capital markets services licence to carry on business in any regulated activity;
- (i) the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;
- (j) the manner in which persons holding a capital markets services licence to carry on a business in any regulated activity conduct their dealings with their customers, conflicts of interest involving the holder of the licence and its customers, and the duties of the holder of a licence to its customers when making recommendations in respect of capital markets products;
- (k) the purchase or sale of capital markets products for their own accounts, directly or indirectly by holders of capital markets services licences to carry on business in any regulated activity and their representatives;
- (l) the disclosure by a holder of a capital markets services licence of any material interest that such person might have in a proposed transaction relating to trading in capital markets products;
- (la) the maintenance by the holder of a capital markets services licence, and a representative of such a holder, of registers of their interests in securities, securities-based derivative contracts and units in a collective investment scheme and their duties relating to the registers, and matters relating thereto;
- (m) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of ~~securities, futures contracts or leveraged foreign exchange trading~~ capital markets products;
- (n) the regulation or prohibition of trading on the floor of a ~~securities exchange, futures exchange~~ an approved exchange or recognised market operator by members of a ~~securities exchange, futures exchange~~ an approved exchange or recognised market operator, as the case may be, or their representatives directly or indirectly for their own accounts and the prevention of such excessive trading on a ~~securities exchange, futures exchange~~ an approved exchange or recognised market operator but off the floor of a ~~securities exchange, futures exchange~~ an approved exchange or recognised market operator by members of a ~~securities exchange, futures exchange~~ an approved exchange or recognised market operator, as the case may be, or their representatives directly or indirectly for their own accounts as the Authority may consider is detrimental to the maintenance of a fair and orderly organised market; and the exemption of such transactions as the Authority may decide to be necessary in the interest of the public, or a section of the public or for the protection of investors;
- (o) the borrowing in the ordinary course of business by persons holding a capital markets services licence as the Authority may consider necessary or appropriate in the interest of the public, or a section of the public or for the protection of investors;

- (p) the prohibition or regulation of dealing in ~~securities~~ capital markets products in circumstances where the person who deals in the ~~securities~~ capital markets products does not hold or have an interest in the ~~securities~~ capital markets products which are being or are proposed to be dealt with;
- (q) the prohibition or restriction of ~~forward contracts in securities~~ securities-based derivative contracts of corporations that are admitted to the official list of a ~~securities exchange~~ an approved exchange;
- (r) the forms for the purposes of this Act;
- (s) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act and the refund and remission, whether in whole or in part, of such fees;
- (t) the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to capital markets products as may be prescribed and for the collection and use of such information for any purpose, whether or not connected with the prescribed capital markets products; ~~and~~
- (u) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act; ~~and~~
- (v) the fees to be paid in respect of submission of documents to the Authority for its review, where such submissions may not be required by written law.

(3) Except as otherwise expressly provided in this Act, the regulations made under this Act —

- (a) may be of general or specific application;
- (aa) may contain provisions of a savings or transitional nature;
- (b) may provide that a contravention of any specified provision thereof shall be an offence; and
- (c) may provide for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

(3A) For the purposes of paragraphs (a)(iv) and (b) of the definition of “derivatives contract” in section 2(1), the Authority may prescribe different contracts, arrangements, transactions and classes of contracts, arrangements or transactions for different purposes.

(3B) For the purposes of the definition of “financial instrument” in section 2(1), the Authority may prescribe different things for different purposes.

(3C) For the purposes of paragraphs (a)(iii) and (b) of the definition of “underlying thing” in section 2(1), the Authority may prescribe different arrangements, events, indices, intangible properties, tangible properties, transactions and classes of

arrangements, events, indices, intangible properties, tangible properties or transactions for different purposes.

(4) Where a person is charged with an offence for contravening a regulation made under subsection (2)(*la*), it shall be a defence for the person to prove —

(a) that his contravention was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and

(b) that —

(i) he was not so aware on the date of the summons issued for the charge; or

(ii) he became so aware before the date of the summons and complied with the regulation within 14 days after becoming so aware.

(5) For the purposes of subsection (4), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at a particular time which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in the securities, securities-based derivative contracts, or units in a collective investment scheme concerned, was aware of at that time.

~~Regulations to apply Act to persons and matters previously regulated under Commodity Trading Act~~

~~342. (1) The Authority may by regulations prescribe such provisions as it may consider necessary or expedient for the purpose of applying this Act in relation to commodity futures contracts, trading in futures contracts, commodity futures brokers, commodity futures broker's representatives, Commodity Futures Exchanges, commodity futures markets, commodity futures pool operators and commodity futures pool operator's representatives; and for this purpose this Act shall apply with such modifications as may be prescribed.~~

~~(2) In subsection (1), "commodity futures contract", "trading in futures contract", "commodity futures broker", "commodity futures broker's representative", "Commodity Futures Exchange", "commodity futures market", "commodity futures pool operator" and "commodity futures pool operator's representative" have the meanings given to those expressions in the Commodity Trading Act (Cap. 48A) in force immediately before the commencement of this provision.~~

FIRST SCHEDULE

Section 2

PART I

ORGANISED MARKET

Definition of organised market

~~1. In this Act, “market” means a securities market or futures market.~~

Definition of futures market

~~2.—(1) In this Act, “futures market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts (whether through that place or facility or otherwise).~~

~~(2) For the purposes of this Act, “futures market” does not include—~~

~~—(a) a place or facility used by only one person—~~

~~—(i) to regularly make offers or invitations to sell, purchase or exchange futures contracts;
or~~

~~—(ii) to regularly accept offers to sell, purchase or exchange futures contracts; or~~

~~—(b) a place or facility that enables persons to negotiate material terms (in addition to the price) of, and enter into transactions in, futures contracts, where the material terms (in addition to the price) of futures contracts are discretionary and not predetermined by the rules or practices of the place or facility.~~

Definition of securities market

~~3.—(1) In this Act, “securities market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange issued securities or such other securities as the Authority may prescribe are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities or prescribed securities (whether through that place or facility or otherwise).~~

~~(2) For the purposes of this Act, “securities market” does not include a place or facility used by only one person—~~

~~—(a) to regularly make offers or invitations to sell, purchase or exchange securities; or~~

~~—(b) to regularly accept offers to sell, purchase or exchange securities.~~

1.—(1) In this Act, “organised market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to exchange, sell or purchase securities, units in collective investment schemes, derivative contracts, or such other securities or derivative contracts as the Authority may prescribe, are regularly made on a centralised basis, being offers or invitations intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange securities, units in collective investment schemes, derivative contracts or prescribed securities or derivative contracts (whether through that place or facility or otherwise).

(2) For the purposes of this Act, “organised market” does not include —

(a) a place or facility used by only one person —

(i) to regularly make offers or invitations to exchange, sell or purchase securities, units in collective investment schemes or derivative contracts; or

(ii) to regularly accept offers to exchange, sell or purchase securities, units in collective investment schemes or derivative contracts.

PART II

CLEARING FACILITY

Definition of clearing facility

4.—(1) In this Act —

“clearing facility” means —

(a) a facility for the clearing or settlement of —

(i) transactions in securities;

(ii) ~~futures contracts~~ units in collective investment schemes; or

(iii) ~~derivatives~~ contracts; or

(b) such other facility or class of facilities for the clearing or settlement of transactions as the Authority may, by order, prescribe;

“clearing or settlement”, in relation to a clearing facility, means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which —

(a) information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;

(b) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

(c) the obligations of parties under those transactions are calculated, whether or not such calculations include multilateral netting arrangements; or

(d) parties to those transactions meet their obligations under such transactions, including the obligation to deliver, the transfer of funds or the transfer of title to securities between the parties.

(2) For the purposes of this Act, “clearing or settlement” does not include —

(a) the back office operations of a party to the transactions referred to in sub-paragraph (1);

(b) the services provided by a person who has, under an arrangement with another person (referred to in this sub-paragraph as the customer), possession or control of securities of the customer, where those services are solely incidental to the settlement of transactions relating to the securities; or

(c) any other arrangement, process, mechanism or service which the Authority may prescribe.

SECOND SCHEDULE

Sections 2 and 340(4)

REGULATED ACTIVITIES

PART I

TYPES OF REGULATED ACTIVITIES

The following are regulated activities for the purposes of this Act:

- (a) dealing in ~~securities~~ capital markets products;
- (b) ~~trading in futures contracts~~;
- (c) ~~leveraged foreign exchange trading~~;
- (d) advising on corporate finance;
- (e) fund management;
- (ea) real estate investment trust management;
- (f) ~~securities~~, securities-based derivative contracts and collective investment scheme financing;
- (fa) providing credit rating services;
- (g) providing custodial services ~~for~~ in relation to securities, securities-based derivative contracts and units in a collective investment scheme.

PART II

INTERPRETATION

In this Schedule —

“agreement” includes arrangement;

“advising on corporate finance” means giving advice —

- (a) to any person (whether as principal or agent, or as trustee of a trust) concerning compliance with or in respect of laws or regulatory requirements (including the listing rules of an ~~an securities~~ approved exchange) relating to the raising of funds by any entity, trustee of a trust on behalf of the trust or responsible person of a collective investment scheme on behalf of the collective investment scheme;
- (b) to a person making an offer —
 - (i) to subscribe for or purchase securities, securities-based derivative contracts or units in a collective investment scheme; or
 - (ii) to sell or otherwise dispose of securities, securities-based derivative contracts or units in a collective investment scheme,concerning that offer;
- (c) concerning the arrangement, reconstruction or take-over of a corporation or any of its assets or liabilities; or
- (d) concerning the take-over of a business trust or any of its assets or liabilities held by the trustee-manager on behalf of the business trust;

“credit rating” means an opinion expressed using an established and defined ranking system of rating categories, primarily regarding the creditworthiness of a rating target;

~~“dealing in securities” means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities;~~

“dealing in capital markets products” means (whether as principal or agent),

(a) making or offering to make with any person; or

(b) inducing or attempting to induce any person to enter into or to offer to enter into

any agreement for or with a view to acquiring, disposing of, entering into, effecting, arranging, subscribing for, or underwriting any capital markets products;

“financial institution” means —

(a) any bank licensed under the Banking Act (Cap. 19);

(b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); or

(c) any finance company licensed under the Finance Companies Act (Cap. 108);

~~“foreign exchange trading” means the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement the effect of which is that —~~

~~—— (a) a party agrees to exchange currency at an agreed rate of exchange with another party whether the currency exchange is effected at the same time or at a specified future time and whether by way of delivery of an amount of currency for another currency, by way of crediting the account of the other party with an amount of another currency, by way of settlement or set off between 2 or more persons or otherwise; or~~

~~—— (b) a party agrees to settle in any manner with another party the difference between the value of any currency index agreed at the time of the making of the contract or arrangement and at a specified future time,~~

~~but does not include any act performed for or in connection with a contract or an arrangement which is a futures contract or such a proposed contract or proposed arrangement;~~

“fund management” means undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) —

(a) the management of a portfolio of ~~securities or futures contracts~~capital markets products; or

(b) the management of a collective investment scheme; or

(c) entering into spot foreign exchange contracts ~~trading or leveraged foreign exchange trading~~ for the purpose of managing the customer’s funds,

but does not include real estate investment trust management;

“leveraged foreign exchange trading” means —entering into spot foreign exchange contracts on a margin basis;

~~—— (a) foreign exchange trading on a margin basis whereby a person undertakes, as determined by the terms and conditions of the foreign exchange trading contract or arrangement —~~

- ~~—— (i) to make an adjustment between himself and another person according to whether a currency is worth more or less, as the case may be, in relation to another currency, or according to whether a currency index rises or falls in value, as the case may be, in relation to an agreed value;~~
 - ~~—— (ii) to pay an amount of money determined or to be determined by reference to the change in value of a currency in relation to another currency, or by reference to the change in value of a currency index in relation to an agreed value; or~~
 - ~~—— (iii) to deliver to another person at an agreed future time an agreed amount of currency at an agreed price;~~
 - ~~—— (b) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or~~
 - ~~—— (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person (whether on a discretionary basis or otherwise) to enter into any contract to facilitate an act of the description mentioned in paragraph (a) or (b);~~
- ~~but does not include any act performed for or in connection with a contract or an arrangement —~~
- ~~—— (i) arranged by a bank that is licensed under the Banking Act (Cap. 19) or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);~~
 - ~~—— (ii) by any person belonging to such class of persons, or carrying on such class or description of business, as may be prescribed by the Authority; or~~
 - ~~—— (iii) which is a futures contract,~~
- ~~or such a proposed contract or arrangement;~~

“offer” or “offering” includes invitation to treat;

“on a margin basis”, in relation to the definition of “leveraged foreign exchange trading”, means ~~the first mentioned person referred to in the definition of “leveraged foreign exchange trading” entering into the a spot foreign exchange contract or arrangement referred to therein by providing to the offeror where one counterparty provides to the other counterparty or his agent money, securities, property or other collateral which represents only a part of the value of the spot foreign exchange contract or arrangement to be entered into by him;~~

“providing credit rating services” means preparing, whether wholly or partly in Singapore, credit ratings in relation to activities in the securities and futures industry for —

- (a) dissemination, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so disseminated; or
- (b) distribution by subscription, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so distributed,

but does not include —

- (i) preparing a private credit rating pursuant to an individual order which is intended to be provided exclusively to the person who placed the order and not intended for public disclosure or distribution by subscription; or
- (ii) preparing credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships;

“providing custodial services ~~for~~ in relation to securities, securities-based derivative contracts and units in a collective investment scheme” means providing or agreeing to provide any service

where the person providing the service has, under an arrangement with another person (the customer), possession or control of the securities, securities-based derivative contracts or units in a collective investment scheme of the customer and carries out one or more of the following functions for the customer:

- (a) settlement of transactions relating to the securities, securities-based derivative contracts or units in a collective investment scheme;
- (b) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the securities, securities-based derivative contracts or units in a collective investment scheme;
- (c) paying tax or other costs associated with the securities, securities-based derivative contracts or units in a collective investment scheme;
- (d) exercising rights, including without limitation voting rights, attached to or derived from the securities, securities-based derivative contracts or units in a collective investment scheme;
- (e) any other function necessary or incidental to the safeguarding or administration of the securities, securities-based derivative contracts or units in a collective investment scheme,

but does not include —

- (i) the provision of any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of futures contracts of the customer and carries out one or more of the functions referred to in sub-paragraphs (a) to (e) in respect of futures contracts;
- (ii) the activities of a corporation which is a Depository as defined in Division 7A of Part IV of the Companies Act (Cap. 50);
- (iii) the provision of services to a related corporation or connected person, so long as none of the securities, securities-based derivative contracts or units in a collective investment scheme in respect of which such service is provided, is —
 - (A) held on trust for another person by the related corporation or connected person;
 - (B) held as a result of any custodial services provided by the related corporation or connected person to another person; or
 - (C) beneficially owned by any person other than the related corporation or connected person;
- (iv~~ii~~) the provision of services by a nominee corporation which are solely incidental to the business of a nominee corporation; or
- (iv) any other conduct as the Authority may prescribe;

“rating category” means a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rating targets;

“rating target” means the subject of a credit rating which may be —

- (a) a person other than an individual;
- (b) the government of a sovereign country, including the Government of Singapore; or
- (c) securities;

“real estate investment trust management” means managing or operating a collective investment scheme —

- (a) that is a trust;

- (b) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
- (c) all or any units of which are listed for quotation on a securities exchange;

“securities, securities-based derivative contracts and collective investment scheme financing” means ~~to directly or indirectly facilitate, by providing any credit facility, advance or loan to facilitate (directly or indirectly) —~~

- (a) ~~the subscription for securities, securities-based derivative contracts or units in a collective investment scheme, or the purchase of securities, securities-based derivative contracts or units in a collective investment scheme listed or to be listed on an organised securities market or the purchase of such other securities, securities-based derivative contracts or units in a collective investment scheme as the Authority may prescribe; or~~ and
- (b) ~~where applicable, the continued holding of those~~ the securities, securities-based derivative contracts or units in the collective investment schemes referred to in sub-paragraph (a),

~~whether or not those~~ the securities, securities-based derivative contracts or units in a collective investment scheme referred to in sub-paragraph (a) or (b) are pledged as security for the credit facility, advance or loan, but does not include the provision of any credit facility, advance or loan —

- (i) to facilitate (directly or indirectly) the purchase of futures contracts or the continued holding of such futures contracts;
- (ii) that forms part of an arrangement to underwrite or sub-underwrite securities, securities-based derivative contracts or units in a collective investment scheme;
- (ii) ~~[Deleted by Act 16/2003]~~
- (iii) ~~to —~~
 - (a) a holder of a capital markets services licence to deal in capital markets products in respect of securities, securities-based derivative contracts or units in a collective investment scheme;
 - (b) a holder of capital markets services licence ~~to~~ provide securities, securities-based derivative contracts and collective investment scheme financing; or
 - (c) a financial institution,
 - ~~to facilitate for facilitating~~ acquisitions or holdings of securities, securities-based derivative contracts or units in a collective investment scheme;
- (iv) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities, securities-based derivative contracts or units in a collective investment scheme;
- (v) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities, securities-based derivative contracts or units in a collective investment scheme by that other member; or
- (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities, securities-based derivative contracts or units in a collective investment scheme;

“~~trading in futures contracts~~” means (whether as principal or agent) —

- ~~(a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a futures contract; or~~

~~(b) soliciting or accepting any order for, or otherwise dealing in, a futures contract.~~

THIRD SCHEDULE

[...]

FOURTH SCHEDULE

[...]