

**DRAFT AMENDMENTS TO
THE SECURITIES AND FUTURES (CLEARING FACILITIES)
REGULATIONS**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

PART I
PRELIMINARY

Definitions

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

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

“accounting standards” means the accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Act (Cap. 2B);

“associate”, in relation to an entity (referred to in this definition as the first entity), means –

(a) any entity in which the first entity controls the composition of the board of directors or such corresponding officers as may be prescribed;

(b) any entity in which the first entity controls more than half of the voting power or such measure corresponding to voting power as may be prescribed;

(c) any entity in which the first entity holds more than half of the total number of issued shares or such corresponding interest as may be prescribed;

(d) a subsidiary of any other entity which is an associate by reason of paragraph (a), (b) or (c);

(e) any entity (referred to in this paragraph as the second entity) in which —

(i)the first entity; or

(ii)any entity which is an associate by reason of paragraph (a), (b), (c) or (d); or

has, or the entities in subparagraphs (i) and (ii) together have, an interest in shares entitling the beneficial owners thereof the right to cast (whether by proxy or in person) not less than 20% but not more than 50% of the total votes able to be cast at a general meeting of the second entity, or such corresponding interest as may be prescribed; or

(f) any entity (not being one which is an associate by reason of paragraph (a), (b), (c), (d) or (e)) the policies of which —

(i)the first entity; or

(ii) any entity which is an associate by reason of paragraph (a), (b), (c), (d) or (e),

or the entities in subparagraphs (i) and (ii) together are able to control or influence materially;

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

“group”, in relation to an approved clearing house or recognised clearing house, means a group of entities comprising the approved clearing house or recognised clearing house and —

(a) any of its associates; and

(b) any other entity treated as part of the clearing house’s group of companies according to the accounting standards applicable to the clearing house.

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

(a) by an off-setting transaction;

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

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

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

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

“specified transaction” means any derivatives contract.

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

[...]

PART III

REGULATION OF APPROVED CLEARING HOUSES

Division 1 – Obligations and Matters relating to

Approved Clearing Houses

Obligation to notify Authority of certain matters

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

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

(1) For the purposes of section 58(1)(f)(i) of the Act, an approved clearing house shall immediately inform the Authority when the approved clearing house becomes aware:

- (a) that it has contravened or is likely to contravene, any provision of any Acts administered, or requirements imposed, by the Authority;
- (b) of any development that has occurred, or is likely to occur, which the approved clearing house has reasonable grounds to believe has materially affected adversely or is likely to materially affect adversely —
 - (i) the financial soundness or reputation of the approved clearing house;
 - (ii) the financial soundness or reputation of any entity in the group of the approved clearing house where such development affects the approved clearing house; or
 - (iii) such other factors as the Authority may specify by notice in

writing.

- (c) that a person who holds an office or appointment under section 71(1) of the Act, is, in accordance with the guidelines issued by the Authority under the Act, no longer a fit and proper person to hold that office or appointment;
- (d) that a person approved under section 70 is, in accordance with the guidelines issued by the Authority under the Act, not a fit and proper person;
- (e) having regard to the likely influence of a person approved under section 70, the approved clearing house is not likely to be able to conduct its business prudently and comply with the provisions of the Act and directions made thereunder;
- (f) any change to the regulatory requirements imposed on the approved clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority, that will have an impact on the approved clearing house;
- (g) any admission or cessation of a bank to act as a settlement bank for the approved clearing house;
- (h) any failure by any party to debit or credit the relevant accounts for the purposes of the settlement of transactions, including the settlement of money, securities or physically delivered futures contracts or derivatives contracts;
- (i) any disruption of or delay in any clearing or settlement procedures of the approved clearing house, including those resulting from any system failure.

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

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

(4) An approved clearing house shall, if it intends to make a declaration that a member of the approved clearing house has defaulted or to commence default

proceedings against any member of the approved clearing house, immediately give the Authority notice of such intent.

- (5) In paragraph (3), “co-operative arrangement” shall not include —
- (a) any joint development of products and services;
 - (b) any joint marketing efforts between the approved clearing house and the person referred to in that paragraph in promoting the services of any clearing facility, market or trade repository established or operated by the approved clearing house or the person; or
 - (c) any memorandum of understanding for the exchange of information.

[...]

Obligation to notify Authority of certain matters

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

- ~~(a) any civil or criminal legal proceeding instituted against the recognised clearing house, whether in Singapore or elsewhere, which may have a material impact on the operations or finances of the recognised clearing house;~~
- ~~(b) any disciplinary action taken against the recognised clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;~~
- ~~(c) any material change to the regulatory requirements imposed on the recognised clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;~~
- ~~(d) any admission or cessation of a bank to act as a settlement bank for the recognised clearing house;~~
- ~~(e) any failure by any party to debit or credit the relevant accounts for the purposes of the settlement of transactions, including the settlement of money, securities or physically delivered futures contracts or derivatives contracts;~~
- ~~(f) the recognised clearing house becoming aware of any acquisition or disposal by any person of a substantial shareholding in the recognised clearing house.~~

(1) For the purposes of section 76(1)(c)(i) of the Act, a recognised clearing house shall immediately inform the Authority when the recognised clearing house becomes aware:

- (a) that it has contravened or is likely to contravene, any provision of any Acts administered, or requirements imposed, by the Authority;
- (b) of any development that has occurred, or is likely to occur, which the recognised clearing house has reasonable grounds to believe has materially affected adversely or is likely to materially affect adversely —
 - (i) the financial soundness or reputation of the recognised clearing house;
 - (ii) the financial soundness or reputation of any entity in the group of the recognised clearing house where such development affects the recognised clearing house; or
 - (iii) such other factors as the Authority may specify by notice in writing.
- (c) that a person who holds an office or appointment as chairman, chief executive officer or director of the recognised clearing house is, in accordance with the guidelines issued by the Authority under the Act, no longer a fit and proper person to hold that office or appointment;
- (d) that a person approved under section 81AA is, in accordance with the guidelines issued by the Authority under the Act, not a fit and proper person;
- (e) having regard to the likely influence of a person approved under section 81AA(1), the recognised clearing house which is incorporated in Singapore is not likely to be able to conduct its business prudently and comply with the provisions of the Act and directions made thereunder;
- (f) any change to the regulatory requirements imposed on the recognised clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority, that will have a material impact on the recognised clearing house;
- (g) any admission or cessation of a bank to act as a settlement bank for the recognised clearing house;
- (h) any failure by any party to debit or credit the relevant accounts for the purposes of the settlement of transactions, including the settlement of money, securities or physically delivered futures contracts or derivatives contracts;
- (i) the recognised clearing house becoming aware of any acquisition or disposal by any person of a substantial shareholding in the recognised clearing house.

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

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