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SECURITIES AND FUTURES ACT  
(CHAPTER 289)

SECURITIES AND FUTURES  
(CLEARING FACILITIES)  
REGULATIONS 2005

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In exercise of the powers conferred by sections 49 (3) and (4), 50 (1), 53, 60 (1), 61 (2), 64 (1), 66, 68 (2) (a), 69 (1), 71 (1) (a) and (2), 76 (3) and (4), 81A (2), 81E, 81S, 339 (3) and 341 of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

## PART I

### PRELIMINARY

#### **Citation and commencement**

**1.** These Regulations may be cited as the Securities and Futures (Clearing Facilities) Regulations 2005 and shall come into operation on 1st July 2005.

#### **Definitions**

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

“annual report” means —

- (a) in relation to a corporation operating a clearing facility, the audited profit and loss accounts, audited balance-sheet and auditors’ report, by whatever name called, of the corporation in respect of the clearing facility; or
- (b) in relation to any other person operating a clearing facility, the profit and loss accounts and balance-sheet of the person in respect of the clearing facility;

“business day”, except for the purposes of regulation 19, has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

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

- (a) by an off-setting transaction;
- (b) by delivery of the commodity underlying the futures contract;

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- (c) through settlement of the futures contract in accordance with the business rules or practices of a futures market, as the case may be; or
  - (d) by substituting the futures contract for a cash commodity;

“settlement bank” means an entity approved by a designated clearing house to settle payment obligations arising from the transactions of the participants of the designated clearing house that are cleared or settled by the designated clearing house.

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

### **Forms**

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

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

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

- (4) The Authority may refuse to accept any form if —
- (a) it is not completed in accordance with this regulation; or
  - (b) it is not accompanied by the relevant fee referred to in regulation 4.

(5) Where strict compliance with any form is not possible, the Authority may allow for necessary modifications to be made to that

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form, or for the requirements of that form to be complied with in such other manner as the Authority thinks fit.

### **Fees**

4.—(1) The fees specified in the First Schedule shall be payable to the Authority for the purposes specified therein and, subject to section 69 (2) of the Act, shall not be refundable.

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

### **Keeping of books and other information**

5. Every person who operates a clearing facility shall ensure that all relevant books and other information as may be required by the Authority for the purposes of the Act are kept for a minimum of 6 years.

## **PART II**

### **ESTABLISHMENT AND OPERATION OF CLEARING FACILITIES**

#### **Notification requirements**

6.—(1) For the purposes of section 49 (3) of the Act, the notification of an intent to establish or operate a clearing facility shall be made in Form 1 and shall be lodged with the Authority together with —

(a) Forms 2 and 3; and

(b) any relevant annex and information specified in Forms 1, 2 and 3.

(2) For the purposes of section 49 (4) of the Act, an application for the reduction of the notification period specified in section 49 (1) shall be made in Form 4.

#### **Obligation to submit periodic reports**

7. For the purposes of section 50 (1) of the Act, a person operating a clearing facility shall submit to the Authority —

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- (a) within 3 months after the end of its financial year or such longer period as the Authority may permit, a copy of its annual report;
  - (b) a report relating to the business of the clearing facility in such form as the Authority may require, at such time or on such periodic basis as may be specified by the Authority; and
  - (c) such other report as the Authority may require for the proper administration of the Act, at such time or on such periodic basis as may be specified by the Authority.

### **Exemption from sections 49, 50 and 51 of Act**

**8.** Sections 49, 50 and 51 of the Act shall not apply to the following persons:

- (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);
- (c) any holder of a capital market services licence;
- (d) any designated clearing house designated under section 55 (1) of the Act;
- (e) any approved exchange approved under section 8 (1) of the Act;
- (f) any recognised market operator recognised under section 8 (2) of the Act; and
- (g) the corporation known as Chicago Mercantile Exchange Inc., in so far as it operates a clearing facility pursuant to the mutual offset system agreement between that corporation and the Singapore Exchange Derivatives Clearing Limited.

## PART III

### REGULATION OF DESIGNATED CLEARING HOUSES

#### *Division 1 — Obligations and matters relating to designated clearing houses*

#### **Obligation to notify Authority of certain matters**

**9.—(1)** For the purposes of section 60 (1) of the Act, a designated clearing house shall, as soon as practicable after the occurrence of

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any of the following circumstances, notify the Authority of the circumstance:

- (a) any civil or criminal legal proceeding instituted against the designated clearing house, whether in Singapore or elsewhere;
- (b) any disciplinary action taken against the designated clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
- (c) any significant change to the regulatory requirements imposed on the designated 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 designated 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 moneys, securities or physically delivered futures contracts;
- (f) any disruption of or delay in any clearing or settlement procedures of the designated clearing house, including those resulting from any system failure.

(2) Where a circumstance under paragraph (1) (a), (b), (e) or (f) has occurred, the designated clearing house shall, in addition to the notification required under paragraph (1), within 14 days of 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 designated clearing house has taken or intends to take.

(3) A designated clearing house shall, within a reasonable period of time prior to entering into negotiations to establish a clearing linkage, clearing arrangement or co-operative arrangement with a person establishing or operating another clearing facility, notify the Authority of such intent to enter into negotiations.

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

- (a) any joint development of products and services;
- (b) any joint marketing efforts between the designated clearing house and the person operating an overseas market or clearing facility in promoting the services of either entity; or

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- (c) any memorandum of understanding for the exchange of information.

### **Obligation to seek Authority's approval**

**10.—**(1) For the purposes of section 61 (2) (b) of the Act, a designated clearing house shall seek the approval of the Authority prior to making any change to the financial resources that are available to the designated clearing house to support a default of its member.

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

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

### **Obligation to submit periodic reports**

**11.—**(1) For the purposes of section 66 of the Act, a designated clearing house shall submit to the Authority —

- (a) within 3 months after the end of its financial year or such longer period as the Authority may permit, a copy of its —
- (i) annual report and directors' report prepared in accordance with the provisions of the Companies Act (Cap. 50); and
  - (ii) auditors' long form report;
- (b) within 45 days after the end of each of the first 3 quarters of its financial year or such longer period as the Authority may permit, a copy of its —
- (i) profit and loss accounts; and
  - (ii) balance-sheet,
- for the preceding quarter, in such form as may be approved by the Authority;
- (c) within 3 months after the end of its financial year or such longer period as the Authority may permit, a report on how the designated clearing house has discharged its responsibilities under the Act and these Regulations during that financial year;

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- (d) a report relating to the business of operating the designated clearing house, at such time or on such periodic basis as may be specified by the Authority; and
  - (e) such other report as the Authority may require for the proper administration of the Act, at such time or on such periodic basis as may be specified by the Authority.
- (2) The auditors' long form report referred to in paragraph (1) (a) (ii) shall include the findings and recommendations of the auditors, if any, on —
- (a) the internal controls of the designated clearing house; and
  - (b) the non-compliance with any —
    - (i) provision of the Act;
    - (ii) direction issued by the Authority under the Act; or
    - (iii) other relevant laws or regulations.

### **Exceptions to obligation to maintain confidentiality**

**12.**—(1) For the purposes of section 68 (2) (a) of the Act, section 68 (1) of the Act shall not apply to the disclosure of user information by a designated clearing house or its officers or employees for the following purposes or in the following circumstances:

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

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

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- (ii) the administration of the estate of a deceased user, including such disclosure as may be required by the Public Trustee or the Commissioner of Estate Duties; or
  - (k) the disclosure of user information is made in connection with —
    - (i) in the case where the user is an individual, the bankruptcy of a user; or
    - (ii) in the case where the user is a body corporate, the winding up or receivership of a user.
  - (2) Where user information is disclosed under sub-paragraph (g), (h) or (i) of paragraph (1), the designated clearing house shall —
    - (a) maintain a record of —
      - (i) the circumstances relating to the disclosure of user information referred to in that sub-paragraph; and
      - (ii) the particulars of —
        - (A) in the case of the disclosure of information under sub-paragraph (g), the arrangement for protection;
        - (B) in the case of the disclosure of information under sub-paragraph (h), the arrangement for transfer;
        - (C) in the case of the disclosure of information under sub-paragraph (i) (i), the outsourcing of the function of the designated clearing house;
        - (D) in the case of the disclosure of information under sub-paragraph (i) (ii), the engagement of the third party; and
        - (E) in the case of the disclosure of information under sub-paragraph (i) (iii), the appointment or engagement of the auditor, lawyer, consultant or other professional,
    - and make the record available for inspection by the Authority;
    - (b) disclose the user information insofar as this is necessary for the relevant purpose; and

- (c) take reasonable steps to ensure that user information disclosed is used by the person to whom the disclosure is made strictly for the relevant purpose, and that the user information is not disclosed by that person to any other person except with the consent of the designated clearing house.

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

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

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

### **Business continuity plan**

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

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

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

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

### **Transmission and storage of user information**

**14.** A designated clearing house shall take all reasonable measures to maintain the integrity and security of the transmission and storage of its user information.

### **Determination of position limits**

**15.—(1)** For the purposes of section 61 (2) (a) of the Act, a designated clearing house shall determine, from time to time, based on such criteria or methodology as may be established by the designated clearing house with the approval of the Authority, position limits in respect of any futures contract cleared by a member of the designated clearing house.

(2) The position limits under paragraph (1) may include limits on a person holding or controlling positions, separately or in combination, net long or net short, for the purchase or sale of a futures contract or an option for the futures contract on a futures equivalent basis.

(3) The designated clearing house —

(a) shall require a person, or any person acting for him pursuant to an express or implied agreement or understanding, who holds or controls net long or net short positions in any futures contract in excess of the position limits determined under paragraph (1) to trade under such conditions and restrictions as the designated clearing house considers necessary to ensure compliance with the position limits determined under that paragraph; and

(b) may require such person referred to in sub-paragraph (a) to do any one or more of the following actions:

(i) cease any further increase in his position;

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- (ii) liquidate his position to comply with the position limits determined under paragraph (1) within such time as may be determined by the designated clearing house;
  - (iii) be subject to higher margin requirements in respect of his position.

(4) In paragraph (2), “futures equivalent basis” means the basis by which an option is adjusted by the risk factor or delta coefficient of that option, such risk factor or delta coefficient being calculated at the close of trading on the last day on which that option was traded or at such other time as the Authority may determine.

### **Regulation of clearing fees of certain designated clearing houses**

**16.—**(1) A designated clearing house specified in Part I of the Second Schedule shall not —

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

without the prior approval of the Authority.

(2) An application to the Authority for approval under paragraph (1) shall be made in Form 5.

(3) The Authority may require the designated clearing house to furnish it with such information or documents as the Authority considers necessary in relation to the application referred to in paragraph (2) and the designated clearing house shall furnish such information or documents as the Authority may require.

(4) The Authority shall, within 20 business days of receipt of a completed application referred to in paragraph (2), by notice in writing to the designated clearing house, either grant the approval or notify the designated clearing house of its intention to refuse to grant the approval.

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

- (a) to a maximum of 35 business days from the day of receipt of a completed application referred to in paragraph (2); or

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(b) for a further period of such duration as the Authority thinks fit upon the expiry of the 35 business days referred to in sub-paragraph (a).

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

(7) The Authority may have regard to the following matters for the purposes of deciding whether to grant or to refuse to grant its approval:

- (a) the effect of the proposed imposition of or change in the clearing fee on —
  - (i) competition in the financial services industry of Singapore; and
  - (ii) access to clearing or settlement services in Singapore;
- (b) the cost of providing the service for which such proposed imposition or change in clearing fee is proposed;
- (c) the effect of such proposed imposition or change on the cost and efficiency of trading, clearing and settlement in Singapore of the securities or futures contracts specified in Part II of the Second Schedule; and
- (d) the effect of such proposed imposition or change on the objective of the Authority as specified in section 4 (c) of the Monetary Authority of Singapore Act (Cap. 186).

(8) The Authority may grant its approval subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the designated clearing house, including conditions or restrictions relating to —

- (a) the period for which the approval of a clearing fee will be in force;
- (b) the circumstances under which, or date by which, the designated clearing house will be required to submit another application for approval of the clearing fee under paragraph (2) upon the expiry of the period referred to in sub-paragraph (a); and
- (c) the circumstances under which, or the changes in the clearing fee for which, the designated clearing house will not be required to submit another application for approval of a

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change in the clearing fee under paragraph (2) upon the expiry of the period referred to in sub-paragraph (a).

(9) The Authority shall not refuse to grant its approval without giving the designated clearing house an opportunity to be heard.

(10) The designated clearing house may only charge the clearing fee approved by the Authority under paragraph (1) for the service or services in respect of which it was approved.

(11) Any clearing fee charged by the company known as The Central Depository (Pte) Limited immediately before 1st July 2005 shall be deemed to be a clearing fee approved by the Authority under paragraph (1), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing.

(12) In this regulation, “clearing fee” means any fee, tariff or compensation for clearing or settlement of transactions in the securities or futures contracts specified in Part II of the Second Schedule.

*Division 2 — Customers’ money and other assets*

**Application of this Division**

**17.** This Division shall apply to every designated clearing house —

- (a) with or to whom money or assets are deposited or paid by its members in respect of or in relation to the contracts of the customers of such members; and
- (b) which holds such moneys or assets in the course of its clearing or settlement activities.

**Permissible investments of customers’ money by designated clearing house**

**18.** For the purposes of section 64 (1) of the Act, a designated clearing house may invest the money deposited with or paid to it in the following classes of securities:

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

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**Daily computation of customers' money and assets**

**19.**—(1) A designated clearing house shall, at such intervals as the designated clearing house determines appropriate but no less frequently than once each business day, compute the total amount of customers' money and assets held by the designated clearing house including money that has been invested by the designated clearing house under section 64 of the Act.

(2) Any computation in respect of each business day shall be completed no later than noon of the next business day and shall be kept by the designated clearing house together with all supporting data.

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

**Verification of money and assets placed with designated clearing house**

**20.** A designated clearing house shall cause its auditors to submit a report to the Authority on a bi-annual basis or at such other time as the Authority may require —

- (a) certifying that the money and assets deposited with or paid to the designated clearing house by a member, in respect of or in relation to a contract of a customer of the member, are —
  - (i) segregated from the other money and assets deposited by the member with the designated clearing house;
  - (ii) deposited in a trust account or custody account in accordance with section 62 (2) (b) of the Act and are not commingled with the money and assets of the designated clearing house; and
  - (iii) used only as permitted under or in accordance with section 62 (2) (b), 63 or 64 of the Act; and
- (b) setting out the amount, on an aggregated basis, of all money and assets deposited by the member with the designated clearing house —
  - (i) in respect of, or in relation to, each contract of the customers of the member; and
  - (ii) in respect of, or in relation to, any other market contract.

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*Division 3 — Rules of designated clearing houses***Content of rules of designated clearing houses**

**21.** For the purposes of section 71 (1) (a) of the Act, a designated clearing house shall make provision in its business rules to the satisfaction of the Authority for —

- (a) the criteria that it would use to determine the admission or denial of admission of persons from membership;
- (b) continuing requirements for each member, including requirements —
  - (i) relating to the proper conduct of the member when participating in any clearing facility operated by the designated clearing house;
  - (ii) that the member has sufficient financial resources to reasonably fulfil all its financial obligations arising out of its activities of any clearing facility operated by the designated clearing house;
  - (iii) that facilitate the monitoring by the designated clearing house of the compliance of the member with the business rules of the designated clearing house; or
  - (iv) that provide for the expulsion, suspension or disciplining of the member for a contravention of the business rules of the designated clearing house;
- (c) the class or classes of transactions that may be cleared or settled on any clearing facility that it operates;
- (d) the terms and conditions under which transactions will be cleared or settled on any clearing facility that it operates;
- (e) matters relating to risks in the operation of any clearing facility that it operates;
- (f) the handling of defaults, including the financial resources available to support the default of a member and the taking of proceedings or any other action against a member which has failed, or appears to be unable, or is likely to become unable, to meet the member's obligations for all unsettled or open market contracts to which the member is a party; and
- (g) the carrying on of business of the designated clearing house with due regard to the interests and protection of the investing public.

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**Amendment of business rules**

**22.**—(1) For the purposes of section 71 (2) of the Act, subject to paragraph (7), a designated clearing house which intends to amend its business rules shall, prior to making the amendment, notify the Authority of —

- (a) the proposed amendment;
- (b) the purpose of the proposed amendment; and
- (c) the date on which the amendment is proposed to come into force.

(2) The designated clearing house shall, prior to notifying the Authority under paragraph (1), consult its participants on the proposed amendment, unless the proposed amendment would have limited impact on its participants.

(3) Subject to paragraphs (4) and (6), an amendment shall not come into force unless the notification referred to in paragraph (1) is submitted at least 21 days before the date on which the amendment is proposed to come into force.

(4) The Authority may, on its own initiative or on the application of the designated clearing house, by notice in writing to the designated clearing house, allow an amendment to come into force before the expiry of the period of 21 days referred to in paragraph (3).

(5) The Authority may, subject to paragraph (6), within 21 days after the receipt of the notification referred to in paragraph (1), by notice in writing to the designated clearing house, disallow, alter or supplement the whole or any part of the proposed amendment and, thereupon, such whole or part of the proposed amendment, as the case may be —

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

(6) The Authority may, in its discretion, by notice in writing to the designated clearing house, vary the period specified in paragraph (5), and where the period in that paragraph is extended, the amendment shall not come into force before the expiry of the extended period.

(7) This regulation shall not apply to any periodic amendment made by a designated clearing house to the initial margin requirement or maintenance margin requirement of a market contract which it

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imposes on its participants, where such amendment is made in response to a change in the historical or anticipated volatility or co-relation of any market contract.

*Division 4 — Matters requiring approval of Authority*

**Application and criteria for approval to acquire substantial shareholding**

**23.**—(1) Any person applying for approval under section 75 (1) or (2) of the Act shall submit to the Authority a written application that sets out —

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

(2) The Authority may require the applicant to furnish it with such information or documents as the Authority considers necessary in

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relation to the application and the applicant shall furnish such information or documents as required by the Authority.

(3) The Authority may approve an application made under section 75 (1) or (2) of the Act if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to be a substantial shareholder, or a 12% controller or 20% controller within the meaning of section 75 (3) of the Act (as the case may be) of the designated clearing house;
- (b) having regard to the applicant's likely influence, the designated clearing house will or will continue to conduct its business prudently and in compliance with the provisions of the Act; and
- (c) it would not be contrary to the interests of the public to do so.

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

**24.**—(1) For the purposes of section 76 (3) of the Act, a designated clearing house may apply for approval under section 76 (1) or (2) of the Act by submitting Form 6 to the Authority.

(2) The Authority may require the designated clearing house to furnish it with such information or documents as the Authority considers necessary in relation to the application referred to in paragraph (1) and the designated clearing house shall furnish such information or documents as required by the Authority.

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

**25.** For the purposes of section 76 (4) of the Act, the Authority may have regard to the following matters in determining whether to approve or refuse to approve the appointment of a person under section 76 (1) or (2) of the Act:

- (a) whether the person is fit and proper to be so appointed;
- (b) whether the appointment of the person would be consistent with any applicable written law relating to the qualifications for the position or the requirements for the composition of the board of directors or any committee of the designated clearing house;

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- (c) whether it would be contrary to the interests of the public to approve the appointment of the person.

*Division 5 — Insolvency provisions*

**Application of Division 4 of Part III of Act**

**26.** For the purposes of section 81E of the Act, Division 4 of Part III of the Act shall apply in respect of transactions on all securities and futures contracts cleared or settled, whether by novation (however described) or otherwise, by a designated clearing house.

PART IV

MISCELLANEOUS

**Criteria to determine failure to discharge duties or functions by officers**

**27.** For the purposes of section 81A (2) of the Act, the Authority may, in determining whether a chairman, chief executive officer or director, or any officer who is a person stated in a notice referred to in section 76 (2) of the Act, of a designated clearing house has failed to discharge the duties or functions of his office, take into consideration whether that person has taken reasonable steps to discharge the following duties:

- (a) ensure the proper functioning of the designated clearing house;
- (b) ensure the compliance of the designated clearing house with any relevant laws or regulations of any jurisdiction in which it is incorporated or in which it operates;
- (c) set out and ensure compliance with written policies on all operational areas of the designated clearing house, including its financial policies, accounting and internal controls, internal auditing and compliance with all laws and rules governing the operations of the designated clearing house;
- (d) identify, monitor and address the risks associated with the business activities of the designated clearing house;
- (e) ensure that the business activities of the designated clearing house are subject to adequate internal audit;

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- (f) oversee the financial undertakings or exposure of the designated clearing house to risks of any nature, by setting out proper delegation limits and risk management controls; and
  - (g) ensure —
    - (i) that the designated clearing house maintains written records of the steps taken by it to monitor compliance with its policies, the limits on discretionary powers and its accounting and operating procedures; and
    - (ii) that every report, return or statement submitted by the designated clearing house to the Authority is complete and accurate.

### **Offences**

**28.**—(1) Unless otherwise provided in these Regulations, any corporation which contravenes regulation 5, 9 (2), 12 (2), 13, 14, 15 (1) or (3) (a), 16 (1), (3) or (10), 19 (1) or (2), 20 or 24 (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 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

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

## **PART V**

### **EXTRA-TERRITORIAL APPLICATION OF PART III OF ACT**

#### **Non-applicability of section 339 (2) of Act**

**29.** For the purposes of section 339 (3) of the Act, section 339 (2) of the Act shall not apply to a person operating a clearing facility outside of Singapore whose clearing facility (referred to in this regulation as the foreign clearing facility) is linked to a clearing facility in Singapore (referred to in this regulation as the Singapore clearing facility), where —

- (a) the clearing systems of the linked clearing facilities are not significantly integrated;

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- (b) the positions of members of the Singapore clearing facility or their customers held at the foreign clearing facility by virtue of the clearing linkage are not significant; and
- (c) the person —
- (i) is willing and able to co-operate with the Authority by providing information and such other assistance to the Authority as may be required by the Authority for the performance of its functions and duties under the Act;
  - (ii) has its head office in a jurisdiction where the Authority has entered into adequate arrangements for mutual co-operation with the financial services regulatory authority responsible for the supervision of that person;
  - (iii) has its head office in a jurisdiction where the regulatory regime is comparable, in the degree to which the objectives specified in section 47 of the Act are achieved, to the requirements and supervision to which clearing facilities are subject under the Act; and
  - (iv) has in place adequate arrangements with the person operating the Singapore clearing facility for the supervision of corporations that clear or settle transactions on both linked clearing facilities.

## PART VI

### REVOCATION

#### **Revocation**

**30.** The Securities and Futures (Clearing Facilities) Regulations (Rg 9) are revoked.

#### FIRST SCHEDULE

Regulation 4

#### FEEES

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| 1. For every application to reduce notification period of intent to establish or operate a clearing facility under section 49 (2) of the Act | \$1,000 |
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FIRST SCHEDULE — *continued*

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|---|-----------|
| 2. Annual fee under section 69 (1) of the Act for —   |           |
| (a) The Central Depository (Pte) Limited  | \$350,000 |
| (b) Singapore Exchange Derivatives Clearing Limited   | \$240,000 |
| 3. For every application for approval to acquire substantial shareholding in a designated clearing house under section 75 (1) or (2) of the Act | \$500.    |

SECOND SCHEDULE

Regulation 16 (1), (7) and (12)

REGULATION OF CLEARING FEES

PART I

SPECIFIED DESIGNATED CLEARING HOUSES

The Central Depository (Pte) Limited.

PART II

SPECIFIED SECURITIES OR  
FUTURES CONTRACTS

Debentures, stocks or shares issued or proposed to be issued by a corporation, body unincorporate or government.

Made this 8th day of June 2005.

HENG SWEE KEAT  
*Managing Director,*  
*Monetary Authority of Singapore.*

[SFD-MCH 024/2002 Vol. 1; AG/LEG/SL/289/2005/6 Vol. 1]