



A BILL

*intituled*

An Act to amend the Securities and Futures Act (Chapter 289).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

**Short title and commencement**

**1.** This Act may be cited as the Securities and Futures (Amendment) Act 2003 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### **Amendment of long title**

2. The long title to the Securities and Futures Act is amended —
  - (a) by inserting, immediately after the word “trading”, the words, “, and of clearing facilities”.

## **PART I**

### **PRELIMINARY**

### **Amendment of section 2**

3. Section 2 of the Securities and Futures Act is amended —
  - (a) by deleting the definition of “clearing facility” and the following paragraph substituted therefor:

“ “clearing facility” means –

    - (a) a facility for the clearing or settlement –
      - (i) of transactions in securities traded on a securities market; or
      - (ii) of futures contracts traded on a futures market; or
    - (b) such other clearing or settlement facility or class of facilities, as the Authority may by order prescribe.”
  - (b) by deleting paragraph (iv) of the definition of “collective investment scheme” and the following paragraph substituted therefor:

“(iv) an arrangement made by a corporation solely for the benefit of its bona fide employees or former employees (including the bona fide employees or former employees of a related corporation), or a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;”;
  - (c) by inserting the word “solely” immediately after the words “the objects thereof” in the 3rd line of paragraph (vii) in the definition of “collective investment scheme;

(d) by deleting the definition of “customer” and substituting the following definition:

“ “customer” means —

- (a) for the purposes of Part V, a person on whose behalf a holder of a capital markets services licence carries on any regulated activity or any other person with whom the holder enters or will enter into transactions, as principal--
  - (i) for the sale or purchase of securities;
  - (ii) for the sale or purchase of futures contracts; or
  - (iii) in connection with leveraged foreign exchange trading,but does not include such person or class of persons as may be prescribed;
- (b) for the purposes of any other provision in this Act, a person on whose behalf a holder of a capital markets services licence carries on any regulated activity;”;

(e) by inserting, immediately after the definition of “share”, the following definition:

“ “subsidiary”, in relation to a corporation, means a corporation that is deemed to be a subsidiary of another corporation by virtue of section 5 of the Companies Act (Cap. 50);”.

## **PART II**

### **MARKETS**

#### *Division 1 – Securities Markets and Futures Markets*

#### **Amendment of section 5**

**4.** Section 5 of the Securities and Futures Act is amended by deleting subsection (9) and substituting the following section therefor:

“(9) The Authority may revoke an exemption granted to a person under subsection (3) or (5) on any of the following grounds without giving the person an opportunity to be heard:

- (a) the person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) the person 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 acted fraudulently or dishonestly.”.

#### **Amendment of section 6**

5. Section 6 of the Securities and Futures Act is amended by deleting subsection (9) and substituting the following section therefor:

“(9) The Authority may revoke an exemption granted to a person under subsection (3) or (5) on any of the following grounds without giving the person an opportunity to be heard:

- (a) the person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) the person 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 acted fraudulently or dishonestly.”.

#### **Amendment of section 7**

6. Section 7 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following subsection therefor:

“(4) Regulations made under this section may provide that –

- (a) a contravention of specified provisions thereof shall be an offence; and
- (b) the offence be punishable with a fine not exceeding \$200,000 or with imprisonment for a term not exceeding 12 months or both, and in the case of a continuing offence, with a further fine not exceeding

10% of the maximum fine punishable under that provision for every day thereof during which the offence continues after conviction.”.

### *Division 2 - Exchanges*

#### **Amendment of section 9**

7. Section 9 of the Securities and Futures Act is amended by inserting, immediately after subsection (6), the following subsections:

“(6A) Subject to subsection (6B), the Authority shall not refuse to grant an approval under subsection (4) without giving the applicant an opportunity to be heard.

(6B) The Authority may refuse to grant an approval to an applicant under subsection (4) 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 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 acted fraudulently or dishonestly.”

#### **Amendment of section 12**

8. Section 12 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following section therefor:

“(4) The Authority may revoke an approval granted to a corporation under section 9 on any of the following grounds without giving the person 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 equivalent person 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 involving fraud or dishonesty or the conviction for which involved a finding that it acted fraudulently or dishonestly.”

### **Amendment of section 15**

9. Section 15 of the Securities and Futures Act is amended by –

(a) deleting subsection (4) and the following section substituted therefor:

“(4) Until the person directed by the Authority under subsection (3) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything else to the contrary in the Companies Act or the memorandum or articles of the securities exchange or futures exchange -

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) shares issued or offered by the securities exchange or futures exchange (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction shall be null and void;
- (c) any subdivision of the shares which are the subject of the direction shall be null and void, notwithstanding the valid subdivision by the securities exchange or futures exchange of the shares held by other shareholders of the securities exchange or futures exchange; and
- (d) except in a liquidation of the securities exchange or futures exchange, any payment of sums or payment in kind (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction shall be null and void.”;

(b) deleting the words “\$10,000” in the 3<sup>rd</sup> line of subsection (5) and substituting the words “\$250,000” therefor;

(c) deleting the words “\$1,000” in the 4<sup>th</sup> line of subsection (5) and substituting the words “\$25,000” therefor; and

(d) inserting the following sections immediately after subsection (5):

“(6) Any person who contravenes any of the directions issued under subsection (3) 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.

(7) For the avoidance of doubt, a direction issued under subsection (3) shall be deemed not to be subsidiary legislation.”

#### **Amendment of section 17**

**10.** Section 17 of the Securities and Futures Act is amended by deleting subsection (2) in its entirety and substituting the following therefor:

“(2) Unless the Authority otherwise directs by notice in writing, there shall be a period of at least 21 days between written notice required to be given under subsection (1) and the date on which the amendment shall come into force.”

#### **Amendment of section 22**

**11.** Section 22 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following subsection therefor:

“(4) The Authority may direct a securities exchange or futures exchange to remove from its office or employment an officer under subsection (1) on any of the following grounds without giving the securities exchange or futures exchange 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 –
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment of 3 months or more.”.

*Division 3 – Exchange Holding Companies*

**Amendment of section 29**

**12.** Section 29 of the Securities and Futures Act is amended by inserting, immediately after subsection (5), the following subsections:

“(5A) Subject to subsection (5B), the Authority shall not refuse to grant an approval under subsection (4) without giving the applicant an opportunity to be heard.

(5B) The Authority may refuse to grant an approval to an applicant under subsection (4) 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 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 acted fraudulently or dishonestly.”.

**Amendment of section 30**

**13.** Section 30 of the Securities and Futures Act is amended by deleting subsection (3) and substituting the following section therefor:

“(3) The Authority may revoke an approval granted to a corporation under section 29 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 equivalent person 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 involving fraud or dishonesty or the conviction for which involved a finding that it acted fraudulently or dishonestly.”

### **Amendment of section 33**

**14.** Section 33 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following subsection therefor:

“(4) The Authority may direct an exchange holding company to remove from its office or employment an officer under subsection (1) on any of the following grounds without giving the exchange holding company 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 –
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment of 3 months or more.”.

### **Amendment of section 34**

**15.** Section 34 of the Securities and Futures Act is amended by –  
(a) deleting subsection (4) and the following section substituted therefor:

“(4) Until the person directed by the Authority under subsection (3) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything else to the contrary in the Companies Act or the memorandum or articles of the exchange holding company -

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) shares issued or offered by the exchange holding company (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction shall be null and void;
- (c) any subdivision of the shares which are the subject of the direction shall be null and void, notwithstanding the valid subdivision by the exchange holding company of the shares held by other shareholders of the exchange holding company; and

- (d) except in a liquidation of the exchange holding company, any payment of sums or payment in kind (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction shall be null and void.”;
- (b) deleting the words “\$10,000” in the 3<sup>rd</sup> line of subsection (5) and substituting the words “\$250,000” therefor;
- (c) deleting the words “\$1,000” in the 4<sup>th</sup> line of subsection (5) and substituting the words “\$25,000” therefor; and
- (d) inserting the following sections immediately after subsection (5):
  - “(6) Any person who contravenes any of the directions issued under subsection (3) 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.
  - (7) For the avoidance of doubt, a direction issued under subsection (3) shall be deemed not to be subsidiary legislation.”

*Division 3 – Recognised Trading System Providers*

**Amendment of section 36**

**16.** Section 36 of the Securities and Futures Act is amended by inserting, immediately after subsection (7), the following subsections:

“(7A) Subject to subsection (7B), the Authority shall not refuse to recognise an applicant as a recognised trading system provider under subsection (4) without giving the applicant an opportunity to be heard.

(7B) The Authority may refuse to recognise an applicant as a recognised trading system provider under subsection (4) 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 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 acted fraudulently or dishonestly.”.

#### **Amendment of section 40**

17. Section 40 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following section therefor:

“(4) The Authority may revoke a recognition granted to a recognised trading system provider under section 36 on any of the following grounds without giving the recognised trading system provider an opportunity to be heard:

- (a) the recognised trading system provider is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the recognised trading system provider;
- (c) the recognised trading system provider 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 acted fraudulently or dishonestly.”.

#### **Amendment of section 44**

18. Section 44 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following subsection therefor:

“(4) The Authority may direct a recognised trading system provider to remove from its office or employment an officer under subsection (1) on any of the following grounds without giving the recognised trading system provider 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 –
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; and

- (ii) punishable with imprisonment of 3 months or more.”.

### **PART III**

#### **CLEARING FACILITIES**

##### *Division 1 – Interpretation*

###### **Amendment of section 49**

**19.** Section 49 of the Securities and Futures Act is amended by inserting, immediately after the word ““property”” in the definition of “property” in subsection (1), the words “, in relation to a market charge or market collateral.”.

##### *Division 2 –Clearing Houses*

###### **Amendment of section 50**

**20.** Section 50 of the Securities and Futures Act is amended by deleting subsection (7) and substituting the following section therefor:

“(9) The Authority may revoke an exemption granted to a person under subsection (3) on any of the following grounds without giving the person an opportunity to be heard:

- (a) the person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) the person 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 acted fraudulently or dishonestly.”.

## **Amendment of section 51**

**21.** Section 51 of the Securities and Futures Act is amended —

(a) by deleting the words “clearing arrangements for transactions in securities and futures contracts” in paragraph (a) of subsection (4) and substituting the words “arrangements for the clearing or settlement of transactions”; and

(b) by inserting, immediately after subsection (4), the following subsections,

“(5A) Subject to subsection (5B), the Authority shall not refuse to grant an approval under subsection (4) without giving the applicant an opportunity to be heard.

(5B) The Authority may refuse to grant an approval to an applicant under subsection (4) 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 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 acted fraudulently or dishonestly.”.

## **Amendment of section 52**

**22.** Section 52 of the Securities and Futures Act is amended —

(a) by deleting the words “securities or futures contracts” in paragraph (a) and substituting the words “any market contract or class of market contracts”; and

(b) by deleting the words “involving securities and futures contracts” in paragraph (b).

### **Amendment of section 53**

**23.** Section 53 of the Securities and Futures Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Regulations made under this section may provide that –

- (a) a contravention of specified provisions thereof shall be an offence; and
- (b) the offence be punishable with a fine not exceeding \$200,000 or with imprisonment for a term not exceeding 12 months or both, and in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine punishable under that provision for every day thereof during which the offence continues after conviction.”.

### **Amendment of section 55**

**24.** Section 55 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following section therefor:

“(4) The Authority may revoke an approval granted to a corporation under section 51 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 equivalent person 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 involving fraud or dishonesty or the conviction for which involved a finding that it acted fraudulently or dishonestly.”.

### **Amendment of section 57**

**25.** Section 57 of the Securities and Futures Act is amended by deleting the words “or in respect of any dealings in securities or trading in futures contracts, any clearing arrangements for securities or futures contracts” in subsection (1), and substituting the words, “or in respect of any transaction or class of transactions cleared and settled by the clearing house”.

## **New section 57A**

**26.** The Securities and Futures Act is amended by inserting, immediately after section 57, the following section:

### **“Control of substantial shareholding in clearing house**

**57A—** (1) No person shall enter into any agreement to acquire shares by virtue of which he would, if the agreement is carried out, acquire a substantial shareholding in a clearing house without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to his entering into the agreement.

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

(3) Without prejudice to subsection (5), the Authority may, for the purposes of securing compliance with subsection (1) or any condition or restriction imposed under subsection (2), by notice in writing direct the transfer or disposal of all or any of the shares of the clearing house in which the substantial shareholder has or has had an interest.

(4) Until the person directed by the Authority under subsection (3) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything else to the contrary in the Companies Act or the memorandum or articles of the clearing house –

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) shares issued or offered by the clearing house (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction shall be null and void;
- (c) any subdivision of the shares which are the subject of the direction shall be null and void, notwithstanding the valid subdivision by the clearing house of the shares held by other shareholders of the clearing house; and
- (d) except in a liquidation of the clearing house, any payment of sums or payment in kind (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction shall be null and void.

(5) Any person who contravenes subsection (1) or (4) or any condition or restriction imposed by the Authority under subsection (2) 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.

(6) Any person who contravenes any of the directions issued under subsection (3) 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.

(7) For the avoidance of doubt, a direction issued under subsection (3) shall be deemed not to be subsidiary legislation.”.

#### **Amendment of section 59**

**27.** Section 59 of the Securities and Futures Act is amended by –

(a) deleting subsection (2) in its entirety and substituting the following therefor:

“(2) Unless the Authority otherwise directs by notice in writing, there shall be a period of at least 21 days between written notice required to be given under subsection (1) and the date on which the amendment shall come into force.”;

(b) by deleting the words “securities or futures contract” in paragraph (b) of subsection (5), and substituting the words, “transaction or class of transactions”.

#### **Amendment of section 63**

**28.** Section 63 of the Securities and Futures Act is amended —

(a) by deleting paragraphs (a) and (b) of subsection (1) and substituting the following paragraphs therefor

“(a) for ensuring fair, orderly and expeditious clearing and settlement of transactions;

(b) for ensuring the integrity and stability of the financial system;”

(b) by deleting the words “securities or futures contracts” in the 1<sup>st</sup> line of paragraph (a) of subsection (2), and substituting the words, “any transaction or class of transactions”; and

- (c) by deleting the words “those securities or futures contracts” in the 3rd line of paragraph (a) of subsection (2), and substituting the words, “such transaction or class of transactions”.

#### **Amendment of section 64**

**29.** Section 64 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following subsection therefor:

“(4) The Authority may direct a clearing house to remove from its office or employment an officer under this section on any of the following grounds without giving the clearing house 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 –
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment of 3 months or more.”.

#### **Amendment of section 65**

**30.** Section 65 of the Securities and Futures Act is amended —

- (a) by deleting the words “at which securities or futures contracts are to be liquidated” in paragraph (b) of subsection (1);
- (b) by deleting the words “for any securities or futures contracts ” in paragraph (c) of subsection (1)”;
- (c) by deleting the words “in any securities or futures contracts or class of securities or futures contracts” in paragraph (a) of subsection (2); and
- (d) by deleting the words “clearing and settlement of transactions in securities or futures contracts or any class of securities or futures contracts” in paragraph (b) of subsection (2) and substituting the words, “arrangements for the clearing or settlement of any transaction or class of transactions”.

### **Amendment of section 66**

**31.** Section 66 of the Securities and Futures Act is amended by deleting the words “in securities or futures contracts”.

## **PART IV**

### **CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVE’S LICENCE**

### **Amendment to section 83**

**32.** Section 83 of the Securities and Futures Act is amended by deleting subsection (2) and substituting the following subsection:

“Subsection (1) shall not apply to-

- (a) any person who acts as a representative of an exempt person;
- (b) any person who acts as a representative of a person specified in the Third Schedule; or
- (c) any person whom the Authority may by regulation exempt from holding a representative’s licence in respect of any regulated activity.”.

### **Amendment of section 84**

**33.** Section 84 of the Securities and Futures Act is amended by

- (a) deleting the word “principal” in the 3rd line of subsection (4) and substituting the word “person”; and
- (b) deleting subsection (5) and substituting the following subsection:

“(5) An application for the grant of a representative’s licence shall be deemed to be withdrawn with effect from the date on which the person who supported the application-

- (a) withdraws his support in writing;
- (b) withdraws his application for a capital markets services licence in respect of that regulated activity; or
- (c) has his application for a capital markets services licence in respect of that regulated activity refused by the Authority.”.

### **Amendment of section 86**

**34.** Section 86 of the Securities and Futures Act is amended by deleting subsection (6) and substituting the following subsection:

“(6) The Authority may refuse an application for the grant or renewal 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 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 acted fraudulently or dishonestly.”.

### **Amendment of section 87**

**35.** Section 87 of the Securities and Futures Act is amended by-

- (a) deleting the words “natural person” in the 1st line of subsection (1) and substituting the word “individual”;
- (b) deleting subsection (5) and substituting the following subsection:

“(4) The Authority may refuse an application for the grant or renewal of a representative’s licence on any of the following grounds without giving the applicant an opportunity to be heard:

- (a) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the applicant 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 acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment of 3 months or more.”.

### **Amendment of section 90**

**36.** Section 90 of the Securities and Futures Act is amended by--

(a) deleting subsection (2) and substituting the following subsection:

“(2) An application under subsection (1) shall -

(a) be accompanied by a non-refundable application fee of such amount as may be prescribed; and

(b) if made in respect of a representative’s licence, be supported, in the prescribed manner by a person who is the holder of or who has applied for a capital markets services licence for that regulated activity.”; and

(b) inserting, immediately after subsection (3), the following subsections:

“(4) The Authority shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.”.

### **Amendment of section 95**

**37.** Section 95 of the Securities and Futures Act is amended by deleting subsection (5) and substituting the following subsection:

“(5) The Authority may revoke or suspend a licence without giving the licensed person an opportunity to be heard-

(a) in the case of a capital markets services licence, on any of the following grounds:

(i) the licensed person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(ii) a receiver, a receiver and manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the licensed person;

(ii) the licensed person 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 acted fraudulently or dishonestly.

(b) in the case of a representative's licence, on any of the following grounds:

- (i) the licensed person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (ii) the licensed person has been convicted, whether in Singapore or elsewhere, of an offence-
  - (A) involving fraud or dishonesty or the conviction for which involved a finding that the licensed person acted fraudulently or dishonestly; and
  - (B) punishable with imprisonment of 3 months or more.”.

### **Amendment of section 96**

**38.** Section 96 of the Securities and Futures Act is amended by-

(a) deleting subsection (1) and substituting with the following subsection:

“(1) No holder of a capital markets services licence shall appoint a person as its—

- (a) chief executive officer;
- (b) director who is based in Singapore, whether or not he is responsible for its business in Singapore; or
- (c) director who is responsible for its business in Singapore, whether or not he is based in Singapore or elsewhere,

unless it has obtained the approval of the Authority.”; and

(b) deleting subsection (4) and substituting the following subsection:

“(4) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the holder of a capital markets services licence 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-
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; and

- (ii) punishable with imprisonment of 3 months or more.”.

#### **Amendment of section 97**

**39.** Section 97 of the Securities and Futures Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) The Authority may direct a holder of a capital markets services licence to remove from its office or employment an officer under subsection (1) on any of the following grounds without giving the holder 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-
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment of 3 months or more.”.

#### **Amendment of section 100**

**40.** Section 100 of the Securities and Futures Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Regulations made under this section may provide –

- (a) that a contravention of specified provisions thereof shall be an offence; and
- (b) that the offence be punishable with a fine not exceeding \$100,000 or with imprisonment for a term not exceeding 12 months or both, and in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine punishable under that provision for every day thereof during which the offence continues after conviction.”.

#### **Amendment of section 101**

**41.** Section 101 of the Securities and Futures Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Without prejudice to the generality of subsection (1), any written direction may be issued with respect to-

- (a) the standards to be maintained by the person concerned in the conduct of his business;

- (b) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and
- (c) the standards with respect to the qualifications, experience and training of applicants for a representative's licence and of representatives of exempt persons.”.

## **PART V**

### **BOOKS, CUSTOMER ASSETS AND AUDIT**

#### **New section 103A**

**42.** The Securities and Futures Act is amended by inserting, immediately after the division heading “Division 2 – Customer Assets” in Part V, the following section:

#### **“Interpretation of this Division**

**103A.** In this Division, unless the context otherwise requires, “money or other assets” means money received or retained by, or any other asset deposited with, a holder of a capital markets services licence in the course of its business for which it is liable to account to its customer, and any money or other assets accruing therefrom.”.

#### **Amendment of section 104**

**43.** Section 104 of the Securities and Futures Act is amended by deleting subsection (3).

#### **New section 104A**

**44.** The Securities and Futures Act is amended by inserting, immediately after section 104, the following section:

#### **“Non-availability of customer money and other assets for payment of debt**

**104A.**—Except as otherwise provided in Part V of this Act and the regulations made thereunder, all money or other assets received from or on account of customers or deposited in the manner prescribed under section 104(1)(b) shall not-

- (a) be available for payment of the debts of a capital markets services licence holder; or
- (b) be liable to be paid or taken in execution under an order or process of any court.”.

**PART VI**  
**CONDUCT OF BUSINESS**

**Amendment of section 120**

**45.** Section 120 of the Securities and Futures Act is amended by-

- (a) deleting subsection (7);
- (b) deleting the words “, offer or recommendation duly signed in accordance with subsection (7)” in subsection (8); and
- (c) renumbering the existing subsections (8), (9), (10), (11) and (12) as subsections (7), (8), (9), (10) and (11) respectively.

**Amendment of section 123**

**46.** Section 123 of the Securities and Futures Act is amended by deleting subsection (4) and the following paragraph substituted therefor:

“(4) Regulations made under this section may provide –

- (a) that a contravention of specified provisions thereof shall be an offence; and
- (b) that the offence be punishable with a fine not exceeding \$100,000 or with imprisonment for a term not exceeding 12 months or both, and in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine punishable under that provision for every day thereof during which the offence continues after conviction.”.

**Amendment of section 125**

**47.** Section 125 of the Securities and Futures Act is amended by--

- (a) deleting the words “subsection (4)” in the 1st line of subsection (1) and substituting the words “subsections (3A) and (4)”;
- (b) inserting, immediately after subsection (3), the following subsection:

“(3A) Subsection (1) shall not apply where the holder of a capital markets services licence to deal in securities enters into a transaction for the sale or purchase of securities, as principal, with 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 finance company licensed under the Finance Companies Act (Cap. 108).”.

## **PART VII**

### **DISCLOSURE OF INTERESTS**

#### **Amendment of section 131**

**48.** Section 131 of the Securities and Futures Act is amended by inserting, immediately after the words “enter in the register” in the first line of subsection (2)(a), the words “,within 7 days after the date of the change,”.

## **PART XII**

### **MARKET CONDUCT**

#### **New section 236A.**

**49.** The Securities and Futures Act is amended by inserting, immediately after section 236, the following section:

#### **“Discovery and Interrogatories**

**236A.—**(1) In any proceedings instituted by the Authority in connection with a contravention of any provision in this Part, the Authority may be required by the court to make discovery of documents, produce documents for inspection and answer interrogatories.

(2) Subsection (1) shall be without prejudice to section 323A or any other written law or rule of law which authorizes or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(3) Any order of court made under the powers conferred by subsection (1) shall be construed as not requiring the disclosure of the existence of any document, the existence of which would, in the opinion of the Authority be injurious to the public interest to disclose.

(4) Where an order of court made under the powers conferred by subsection (1) directs that a list of documents made in answer to an order for discovery against the Authority be verified by affidavit, the affidavit shall be made by such officer of the Authority as the court may direct.

(5) Where an order of court made under the powers conferred by subsection (1) directs that interrogatories be answered by the Authority, the court shall direct by what officer of the Authority the interrogatories are to be answered.”

### **PART XIII**

#### **OFFERS OF INVESTMENTS**

##### *Division 1 – Shares and Debentures*

#### **Amendment of section 239**

**50.** Section 239 of the Securities and Futures Act is amended —

- (a) by deleting the words “or any other entity” in the 2nd and 3rd lines of the definition of “debenture” in subsection (1);
- (b) by inserting the words “section 4(1) of” in the 1st line of the definition of “guarantor corporation”;
- (c) by deleting the words “and 244” in the 7th line of the definition of “preliminary document” in subsection (1);
- (d) by deleting “256” in the 8th line of the definition of “prospectus” in subsection (1);
- (e) by deleting the definition of “trustee corporation” in subsection (1);
- (f) by inserting the words “or other entity” immediately after the words “be deposited with or lent to the corporation” in the 6th line of paragraph (b) of subsection (3);
- (g) by deleting “256” in paragraph (b)(ii)(B) of subsection (6) and substituting “277(1)”.

#### **Amendment of section 240**

**51.** Section 240 of the Securities and Futures Act is amended —

- (a) by deleting the words “sections 243 and 244” in paragraph (a)(i) of subsection (1) and substituting the words “section 243”;

- (b) by inserting the words “by the Authority” immediately after the words “as may be prescribed” in paragraph (b) of subsection (1);
- (c) by deleting the words “sections 243 and 244” in paragraph (a) of subsection (4) and substituting the words “section 243”;
- (d) by inserting the words “by the Authority” immediately after the words “as may be prescribed” in paragraph (e) of subsection (4);
- (e) by deleting the words “sections 243 and 244” in subsection (9) and substituting the words “section 243”;
- (f) by deleting subsection (11) and the following paragraph is substituted therefor:

“(11) Where the Authority directs or gives consent to the lodgment of an amendment to the prospectus or profile statement prior to the registration of the prospectus or profile statement, the prospectus or profile statement as amended shall be deemed to have been lodged at the time when the original prospectus or profile statement was first lodged with the Authority.”;

- (g) by deleting subsection (12) and substituting the following paragraph:

“(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 who lodges the prospectus or profile statement and, where applicable, the translation thereof shall provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation thereof in such form or medium for publication as the Authority may require.”.

- (h) by deleting the words “sections 243 and 244” in paragraph (b) of subsection (13) and substituting the words “section 243”;

- (i) by deleting the word “him” in the 3rd line of paragraph (c) of subsection (13) and substituting the words “a director or proposed director”; and
- (j) by deleting subsection (15) and the following section substituted therefor:

“(15) The Authority shall not refuse to register a copy of a prospectus under subsection (13) or profile statement under subsection (14) without giving the person who lodged the prospectus or profile statement 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 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 an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation.”.

#### **Amendment of section 241**

**52.** Section 241 of the Securities and Futures Act is amended —

- (a) by deleting the words “or 244” in paragraphs (b) and (c)(ii)(A) of subsection (1); and
- (b) by deleting subsections (5) and (6) and the following subsections substituted therefor:

“(5) The person who lodges a supplementary document or the corporation concerned shall take reasonable steps to inform potential investors of such lodgment and make available the supplementary document to them.

(5A) 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 shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus; and

(b) where the supplementary document is a supplementary profile statement, the profile statement shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement.

(6) The person who lodges a replacement document or the corporation concerned shall take reasonable steps to inform potential investors of such lodgment and make available the replacement document to them.

(6A) 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 shall be taken to be the replacement prospectus; and

(b) where the replacement document is a replacement profile statement, the profile statement shall be taken to be the replacement profile statement.

#### **Amendment of section 242**

**53.** Section 242 of the Securities and Futures Act is amended —

(a) by deleting subsections (1) and (2) and the following subsections substituted therefor:

“(1) If a prospectus has been registered and –

(a) the Authority is of the opinion that the prospectus contains a false or misleading statement or matter;

(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 who lodged the prospectus direct that no or no further shares or debentures, or units of shares or debentures to which the prospectus relates 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 or matter;
- (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 who lodged the profile statement, direct that no or no further shares or debentures, or units of shares or debentures to which the profile statement relates be allotted, issued or sold.”;

(b) by deleting subsection (4) and the following subsections substituted therefor:

“(4) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person who lodged the prospectus or profile statement 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 corporation whose shares or debentures, or units of shares or debentures are the subject of the offer or invitation to which the prospectus or profile statement relates 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 corporation referred to in paragraph (a).

(4A) Where the person who lodged a prospectus or profile statement is aggrieved by a stop order served under subsection (1) or (2), he may, within 30 days from

the date of the stop order, appeal to the Minister whose decision shall be final.”; and

- (c) by inserting the words “by the Authority” immediately after the words “, unless revoked” in the 1st line of subsection (9).

#### **Repeal of section 244**

**54.** Section 244 of the Securities and Futures Act is repealed.

#### **Amendment of section 245**

**55.** Section 245 of the Securities and Futures Act is amended by deleting the words “or other entity” in the 1st line of subsection (1).

#### **Amendment of section 247**

**56.** Section 247 of the Securities and Futures Act is amended —

- (a) by deleting subsection (1) and substituting the following subsection:

“(1) The Authority may exempt any person or any prospectus or profile statement, from any requirement of this Act relating to the form and content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.”;

- (b) by deleting subsection (2) and substituting the following subsection:

“(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 requirements 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 requirements in respect of which exemption has been applied for were dispensed with.”;

- (c) by inserting the words “any class of persons or” after the word “exempt” in subsection (3); and
- (d) by deleting subsection (6).

### **Amendment of section 249**

**57.** Section 249 of the Securities and Futures Act is amended by inserting, immediately after subsection (1), the following subsections:

“(1A) The Authority may exempt any person or class of persons, or any prospectus or class or description of prospectuses, from this section, subject to such conditions or restrictions as may be determined by the Authority.

(1B) Any person who contravenes any of the conditions or restrictions imposed under subsection (1A) 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.”

### **Amendment of section 252**

**58.** Section 252(1) of the Securities and Futures Act is amended —

(a) by deleting the words “during the application period” in the 6th line and substituting the words “at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer or invitation”;

(b) by deleting paragraph (b) and substituting the following paragraph :

“(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”; and

(c) by deleting the words “or 244, or” in the 2nd line of paragraph (c)(ii) and substituting the words “, or required”.

### **Amendment of section 253**

**59.** Section 253 of the Securities and Futures Act is amended —

(a) by inserting the words “or matter” after the word “statement” in paragraph (a) of subsection (1); and

(b) by deleting the words “or 244” in paragraphs (b) and (c)(ii) of subsection (1).

### **Amendment of section 254**

**60.** Section 254(1) of the Securities and Futures Act is amended —

(a) by deleting paragraph (b) and substituting the following paragraph :

“(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”; and

(b) by deleting paragraph (c) and substituting the following paragraph :

“(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.”.

### **Repeal of section 256**

**61.** Section 256 of the Securities and Futures Act is repealed.

### **Amendment of section 257**

**62.** Section 257 of the Securities and Futures Act is amended -

(a) by deleting the words “units of any” in the 2nd and 3rd lines of subsection (1) and substituting the words “any units of”; and

(b) by inserting the word “the” in paragraph (a) of subsection (5).

### **Amendment of section 259**

**63.** Section 259 of the Securities and Futures Act is amended -

- (a) by inserting the words “and the Authority shall give notice of such exemption in the *Gazette*” immediately after the words “from the provisions of this section” in the 9th line of subsection (3);
- (b) by deleting the words “shares or units of shares” in the 1st line of paragraph (b) of subsection (6) and substituting the words “shares or debentures, or units of shares or debentures”;
- (c) by deleting the words “under this section” in the 1st line of subsection (7) and substituting the words “from applicants in pursuance of the prospectus”;
- (d) by deleting the words “dealt in or quoted on any securities exchange” in the 3rd line of paragraph (a) of subsection (11) and substituting the words “listed for quotation on the official list of, dealt in or quoted on, any securities exchange”; and
- (e) by deleting the words “dealing in or quoting the shares or debentures, or units of shares or debentures, on any securities exchange” in the 3rd, 4th and 5th lines of paragraph (b) of subsection (11) and substituting the words “listing for quotation on the official list of, dealing in or quoting the shares or debentures, or units of shares or debentures, on any securities exchange”.

### **Amendment of section 260**

**64.** Section 260 of the Securities and Futures Act is amended -

- (a) by substituting the word “company” with the word “corporation” wherever it appears in the section; and
- (b) by deleting paragraph (b) of subsection (6) and substituting the following paragraph:
  - “(b) in the case where –
  - (i) the corporation is not a company;
  - (ii) the corporation is not required to hold a statutory meeting; or
  - (iii) the allotment is made after the holding of the statutory meeting,

within one month after the date of the allotment and not later.”.

### **Amendment of section 261**

**65.** Section 261 of the Securities and Futures Act is amended by inserting, immediately after subsection (3), the following subsections:

“(4) Nothing in this Subdivision shall apply to a prescribed corporation.

(5) Where a prescribed corporation which makes an offer or invitation in respect of debentures, makes provision in those debentures or in a trust deed relating to those debentures for the appointment of a trustee for the holders of the debentures, nothing in this Subdivision shall apply to those debentures, the trust deed or the trustee.

(6) In subsections (4) and (5), “prescribed corporation” means

-

- (a) any bank licensed under the Banking Act (Cap.19); or
- (b) any corporation or other entity or any corporation or other entity of a class which has been declared by the Authority by notification published in the Gazette to be a prescribed corporation, subject to such conditions or restrictions as it may think fit to impose by notice in writing.

(7) The Authority may, at any time by notice in writing, vary or revoke any condition or restriction imposed under subsection (6)(b).”

### **Repeal of sections 262, 263 and 264**

**66.** Sections 262, 263 and 264 of the Securities and Futures Act are repealed.

### **Repeal and re-enactment of section 266**

**67.** Section 266 of the Securities and Futures Act is repealed and the following section substituted therefor:

#### **“Powers of trustees to apply to Authority and court for orders, directions, etc.**

**266.**—(1) Where, after due inquiry, a trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations 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.

(2) The Authority, on such application —

- (a) after giving the borrowing corporation an opportunity of making representations in relation to that application, by order in writing served on the corporation at its registered office in Singapore, may impose such restrictions on the activities of the borrowing corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation as the Authority thinks necessary for the protection of the interests of the holders of the debentures; or
- (b) may, and if the borrowing corporation so requires, shall direct the trustee to apply to the court for an order under subsection (4); and the trustee shall apply accordingly.

(3) Where —

- (a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations 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 corporation has contravened an order made by the Authority under subsection (1),

the trustee may, and where the borrowing corporation has requested the trustee to do so, shall apply to the court for an order under subsection (4).

(4) Where an application is made to the court under subsection (2) or (3), the court may, after giving the borrowing corporation 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 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 corporation;

- (c) restrain the payment of any moneys by the borrowing corporation to the holders of debentures of the borrowing corporation or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security, if any, for the debentures;
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or any of its guarantor corporations or the public,

but in making any such order the court shall have regard to the rights of all creditors of the borrowing corporation.

(5) The court may vary or rescind any order made under subsection (4) as the court thinks fit.

(6) A trustee in making any application to the Authority under subsection (1) or to the court under subsection (2) or (3) shall have regard to the nature and kind of security given when the offer or invitation in respect of the debentures was made to the public, and if no security was given shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.

(7) A trustee may rely upon any certificate or report given or statement made by any advocate and solicitor, auditor or officer of the borrowing corporation or guarantor corporation 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.

(8) A trustee for the holders of debentures may also 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 debentures;

(9) Where an application is made to the court under subsection (8), 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.

(10) On an application under subsection (8), the court may order a meeting of all or any of the holders of 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.

(11) The meeting ordered under subsection (10) 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.”.

### **Repeal and re-enactment of section 267**

**68.** Section 267 of the Securities and Futures Act is repealed and the following section substituted therefor:

#### **“Rights of Authority, securities exchange and holders of debentures to apply to court for order**

**267.** The Authority, a holder of debentures and, where the debentures are listed for quotation on the official list of or quoted on a securities exchange, the securities exchange may apply to the court for an order to compel the trustee for the holders of such debentures to perform his duties as set out in the trust deed relating to those debentures.”.

### **Amendment of section 270**

**69.** Section 270(1) of the Securities and Futures Act is amended by deleting subsection (1) and the following subsection substituted therefor:

“(1) Where there is, in any prospectus issued in connection with an offer or invitation in respect of debentures, a statement as to any particular purpose or project for which the moneys received by the borrowing corporation in response to the invitation are to be applied, the borrowing corporation shall, where there is a trustee for the holders of those 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.”.

## **Repeal and re-enactment of section 273**

**70.** Section 273 of the Securities and Futures Act is repealed and the following section substituted therefor:

### **“Offer or invitation made under certain circumstances**

**273.**—(1) Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures or units of shares or debentures, 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 —
  - (i) some or all of the shares in a corporation, not being a company, or some or all of the shares of a particular class in a corporation, not being a company, made to all members of the corporation, or where the person already holds shares in the corporation, made to all other members of the corporation; or
  - (ii) all of the remaining shares in a corporation, not being a company, made to all other members of the corporation as a result of the person acquiring or consolidating effective control of that corporation;

where such offer is in compliance with the laws of the country in which the corporation was incorporated.

- (c) it is made in connection with a proposed compromise or arrangement between -
  - (i) a corporation, not being a company, and its creditors or a class of them; or
  - (ii) a corporation, not being a company, and its members or a class of them,

that if executed would result in a change in effective control of the corporation concerned and such proposed compromise or arrangement and the execution thereof is in compliance with the laws of the country in which the corporation was incorporated;

- (d) in the case of an offer or invitation in respect of shares or debentures, it is made in relation to shares or debentures that have been previously issued and are listed for quotation or quoted on a securities exchange;

(e) in the case of an offer or invitation in respect of units of shares or debentures, —

(i) it is made in relation to units of shares or debentures that have been previously issued and are listed for quotation or quoted on a securities exchange or recognized securities exchange; or

(ii) it is made in relation to units of shares or debentures where the shares or debentures have been previously issued and are listed for quotation or quoted on a securities exchange or recognized securities exchange;

(f) it is made, whether or not in relation to shares or debentures, or units of shares or debentures, that have been previously issued, by a corporation to a qualifying person, where the shares or debentures or units of shares or debentures are to be held by or for the benefit of the qualifying person in accordance with a share investment offer or scheme (including a share option offer or scheme) for the time being in force, if —

(i) the qualifying person is not induced to purchase the shares or debentures, or units of shares or debentures, by an expectation of employment or continued employment of himself or his related person, as the case may be;

(ii) no selling or promotional expenses are paid or incurred in connection with the offer or scheme, other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by a holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.

(2) For the purposes of subsections (1)(b) and (c), “effective control”, “acquiring effective control” and “consolidating effective control” shall have the same meaning as in the Take-over Code as if references in the Take-over Code to a company are references to the corporation referred to in subsection (1)(b) or (c).

(3) For the avoidance of doubt, nothing in subsection (1)(f) shall be construed to make an offer or invitation by a corporation to a qualifying person in respect of any of its shares or debentures or units of its shares or debentures, an offer or invitation to the public by reason only that such offer or invitation is made to the qualifying person.

(4) For the purposes of subsection (1)(f) and subsection (3), in relation to the corporation making the offer or invitation, a person is a “qualifying person” if he is a genuine employee or former employee of the corporation or its related corporation, or the wife, husband, widow, widower, or the child, adopted child or stepchild under the age of twenty-one, of such employee or former employee.

(5) For the purposes of subsection (1)(f), in relation to the qualifying person, a person is a “related person” if he is the parent, adoptive parent, wife, husband, child, adopted child or stepchild of the qualifying person.

(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 or invitation in respect of shares, debentures or units of shares or debentures 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 or invitation in respect of shares, debentures or units of shares or debentures,

Subdivisions (2) and (3) of this Division shall not apply to a person making such an offer or invitation to the public 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 or invitation as it may determine.

(8) 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.

(9) A declaration made under subsection (6) shall be final.”.

## **Repeal and re-enactment of section 274**

**71.** Section 274 of the Securities and Futures Act is repealed and the following section substituted therefor:

### **“Offer or invitation made to certain institutions or persons**

**274.**-(1) Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures, or units of shares or debentures, whether or not they have been previously issued, made to -

- (a) a bank that is licensed under the Banking Act (Cap. 19);
- (b) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (c) a finance company licensed under the Finance Companies Act (Cap. 108);
- (d) a company or society registered under the Insurance Act (Cap. 142);
- (e) a company registered under the Trust Companies Act (Cap. 336);
- (f) the Government or a statutory body;
- (g) a pension fund or collective investment scheme;
- (h) an investment company as defined in section 355(1) of the Companies Act (Cap. 50);
- (i) a holder of a capital markets services licence for -
  - (i) dealing in securities;
  - (ii) fund management;
  - (iii) providing custodial services for securities;
  - (iv) securities financing; or
  - (v) trading in futures contracts;
- (j) a person which carries on business in dealing in bonds with -
  - (i) an accredited investor; or
  - (ii) a person whose business involves the acquisition and disposal of or holding of securities (whether as principal or agent);

- (k) a designated market-maker as defined in paragraph 1 in the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations 2002;
- (l) a headquarters company, as defined in paragraph 1 in the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations 2002, or Finance and Treasury Centre, as defined in that paragraph, which carries on a class of business involving fund management which has been approved as a qualifying service in relation to that headquarters company or Finance and Treasury Centre under section 43E(2)(a) or 43G(2)(a) of the Income Tax Act (Cap. 134), as the case may be;
- (m) a person resident in Singapore who undertakes fund management on behalf of not more than 30 qualified investors having the same meaning as in paragraph 5(3) in Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations 2002;
- (n) a Service Company which carries on business as an agent of a member of Lloyd's;
- (o) such other person, who pursuant to the offer or invitation, acquires the shares, debentures, or units of shares or debentures, as principal or as a trustee for accounts fully managed by it, and who has been declared by the Authority as an exempt purchaser or is within a class of persons declared by the Authority as exempt purchasers.

(2) For the purposes of subsection (1)(n), “agent”, in relation to a member of Lloyd's, “Lloyd's”, “member of “Lloyd's” and Service Company” have the same meanings as in regulation 2 of the Insurance (Lloyd's Asia Scheme) Regulations 2002.”.

#### **Amendment of section 275**

**72.** Section 275 of the Securities and Futures Act is amended —

- (a) by deleting the definition of “information memorandum” in subsection (2) and the following paragraph substituted therefor:

““information memorandum” means a document —

- (a) purporting to describe the business and affairs of -

- (i) the corporation whose shares, debentures or units of shares or debentures are the subject of an offer or invitation;
- (ii) the person making the offer or invitation; or
- (iii) both;

(b) purporting to have been prepared for delivery to and review by sophisticated investors so as to assist them in making an investment decision in respect of the shares or debentures, or units of shares or debentures, which are the subject of an offer or invitation;”;

(b) by deleting the word “ total” in paragraph (b)(i) of the definition of “sophisticated investor” in subsection (2); and

(c) by deleting the words “a natural person” in paragraph (c) of the definition of “sophisticated investor” in subsection (2) and substituting the words “an individual”.

#### **Amendment of section 276**

**73.** Section 276 of the Securities and Futures Act is amended —

- (a) by deleting subsection (3) and the following subsection substituted therefor:

“(3) Subject to section 257, subsection (2) shall not apply if at least 6 months have elapsed from the date that the shares, debentures or units of shares or debentures to which the offer or invitation relates were initially acquired pursuant to an exemption under section 274 or 275.”; and

- (b) by deleting the word “listed” in the 2nd line of subsection (4).

#### **Repeal and re-enactment of section 277**

**74.** Section 277 of the Securities and Futures Act is repealed and the following section substituted therefor:

#### **“Renounceable rights issues and securities exchange offer or invitation**

**277.** (1) An offer of shares in or debentures of, or units of shares in or debentures of, a company for subscription or purchase, or an invitation to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a company shall be deemed to be an offer to the public if -

- (a) it is an offer or invitation by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that company; and
- (b) an application has been or will be made for permission for the shares or debentures, or units of shares or debentures to be listed for quotation on any securities exchange.

(2) Where -

- (a) subsection (1) applies to an offer or invitation in respect of shares in or debentures of, or units of shares in or debentures of, a company; or
- (b) an offer or invitation to the public is in respect of shares debentures, or units of shares or debentures which have not been previously issued and are, or are to be, uniform in all respects with shares or debentures, or units of shares or debentures, previously issued and listed for quotation on a securities exchange,

and an offer information statement which complies with such form and content as prescribed by the Authority, is lodged with the Authority and the securities exchange, Subdivisions (2) and (3) of this Division shall not apply to the offer or invitation for a period of 6 months from the date of lodgment of the offer information statement.

(3) The Authority may by notice in writing to the person making an offer or invitation under this section, or an advocate and solicitor acting on behalf of the person, modify the prescribed form and content of the offer information statement in such manner as is appropriate.

(4) For the purposes of this section -

- (a) shares shall be deemed to be uniform in all respects with shares previously issued notwithstanding that they do not carry the same rights to dividends as the latter during the 12 months immediately following the issue; and
- (b) an offer information statement referred to in subsection (2) shall be deemed to be a prospectus for the purposes of sections 253, 254 and 255.”.

### **Repeal and re-enactment of section 280**

**75.** Section 280 of the Securities and Futures Act is repealed and the following section substituted therefor:

#### **“Reporting requirements**

**280.** Where an issuer intends to invoke an exemption under section 278 or 279, he shall lodge with the Authority a report of his intention to issue the shares or debentures, or units of shares or debentures, in such form as may be prescribed at or before the time of invoking the exemption.”.

### *Division 2 – Collective Investment Schemes*

#### **Amendment of section 283**

**76.** Section 283(1) of the Securities and Futures Act is amended by deleting the definition of “responsible person” and substituting the following paragraph:

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

- (a) in the case of a scheme which is authorized under section 286 or a scheme for which an application for authorization has been made under section 286, the manager for the scheme;
- (b) in the case of a scheme which is recognized under section 287 or a scheme for which an application for recognition has been made under section 287 –
  - (i) where the scheme is constituted as a corporation, the corporation;
  - (ii) where the scheme is not constituted as a corporation, the manager for the scheme;”.

#### **Amendment of section 286**

**77.** Section 286 of the Securities and Futures Act is amended -

- (a) by deleting the paragraphs (i) to (vi) of paragraph (b) of subsection (3) and the following paragraphs substituted therefor:

“(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.”; and
- (b) by deleting subsection (6) and the following paragraph substituted therefor:

“(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 authorize the collective investment scheme on the basis of any of the following circumstances:

  - (a) the responsible person 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 responsible person.”.

**Amendment of section 287**

**78.** Section 287 of the Securities and Futures Act is amended -

- (a) by deleting the paragraphs (i) to (vi) of paragraph (b) of subsection (3) and the following paragraphs substituted therefor:

“(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.”; and
- (b) by deleting subsection (5) and the following paragraph substituted therefor:

“(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 responsible person 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 responsible person.”.

**Amendment of section 288**

**79.** Section 288 of the Securities and Futures Act is amended by inserting the following subsections immediately after subsection (8):

“(8A) The Authority shall not revoke the authorization or recognition of a collective investment scheme under subsection (1), suspend the authorization or recognition of a collective investment scheme under subsection (5) or refuse the withdrawal of an authorization 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 it is not in the public interest on the basis of any of the following circumstances:

- (a) the responsible person 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 responsible person.

(8B) Any person who is aggrieved by the revocation under subsection (1), suspension under subsection (5) or refusal of withdrawal under subsection (8) may, within 30 days after he is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.”.

**Amendment of section 296**

**80.** Section 296 of the Securities and Futures Act is amended -

- (a) by deleting subsection (8) and the following paragraph substituted therefor:

“(8) Where the Authority directs or consents to the lodgment of an amendment to the prospectus or profile statement prior to the registration of the prospectus or profile statement, the prospectus or profile statement as amended shall be deemed to have been lodged at the

time when the original prospectus or profile statement was first lodged with the Authority.”;

- (b) by deleting subsection (9) and substituting the following paragraph:

“(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 who lodges the prospectus or profile statement and, where applicable, the translation thereof shall provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation thereof in such form or medium for publication as the Authority may require.”;

- (c) by deleting the word “him” in the 5th line of paragraph (d)(i) of subsection (10) and substituting the words “the director or proposed director”; and

- (d) by deleting subsection (12) and the following paragraph substituted therefor:

“(12) The Authority shall not refuse to register a copy of a prospectus under subsection (10), or a profile statement under subsection (11), without giving the person who lodged the prospectus or profile statement, as the case may be, 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 responsible person 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 responsible person.”.

## **Amendment of section 297**

**81.** Section 297 of the Securities and Futures Act is amended by deleting subsections (1), (2) and (3) and substituting the following subsections:

- “(1) If a prospectus has been registered and –
- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement or matter;
  - (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 responsible person for the scheme, direct that no or no further units in a collective investment scheme to which the prospectus relates 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 or matter;
  - (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 responsible person for the scheme, direct that no or no further units in a collective investment scheme to which the profile statement relates be issued or sold.

(3) The Authority shall not serve a stop order under subsection (1) or (2) without giving the responsible person who lodged the prospectus or profile statement 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 responsible person 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 responsible person.

(3A) Where the responsible person who lodged a prospectus or profile statement is aggrieved by a stop order served under subsection (1) or (2), he may, within 30 days from the date of the stop order, appeal to the Minister whose decision shall be final.”

#### **Amendment of section 301**

**82.** Section 301 of the Securities and Futures Act is amended —

- (a) by deleting the words “under this section” in the 1st line of subsection (7) and substituting the words “from applicants as payment 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 units”;
- (b) by deleting the words “dealt in or quoted on any securities exchange” in the 2nd and 3rd lines of paragraph (a) of subsection (11) and substituting the words “listed for quotation on the official list of , dealt in or quoted on any securities exchange”; and
- (c) by deleting the words “dealing in or quoting units on any securities exchange” in the 3rd and 4th lines of paragraph (b) of subsection (11) and substituting the words “listing for quotation on the official list of, dealing in or quoting units on any securities exchange”.

## **Repeal and re-enactment of section 304**

**83.** Section 304 of the Securities and Futures Act is repealed and the following section substituted therefor:

### **“Offer or invitation made to certain institutions or persons**

**304.-**(1) Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, made to —

- (a) a bank that is licensed under the Banking Act (Cap. 19);
- (b) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (c) a finance company licensed under the Finance Companies Act (Cap. 108);
- (d) a company or society registered under the Insurance Act (Cap. 142);
- (e) a company registered under the Trust Companies Act (Cap. 336);
- (g) the Government or a statutory body;
- (g) a pension fund or collective investment scheme;
- (h) an investment company as defined in section 355(1) of the Companies Act (Cap. 50);
- (i) a holder of a capital markets services licence for -
  - (vi) dealing in securities;
  - (vii) fund management;
  - (viii) providing custodial services for securities;
  - (ix) securities financing; or
  - (x) trading in futures contracts;
- (j) a person which carries on business in dealing in bonds with -
  - (iii) an accredited investor; or
  - (iv) a person whose business involves the acquisition and disposal of or holding of securities (whether as principal or agent);

- (k) a designated market-maker as defined in paragraph 1 in the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations 2002;
  - (p) a headquarters company, as defined in paragraph 1 in the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations 2002, or Finance and Treasury Centre, as defined in that paragraph, which carries on a class of business involving fund management which has been approved as a qualifying service in relation to that headquarters company or Finance and Treasury Centre under section 43E(2)(a) or 43G(2)(a) of the Income Tax Act (Cap. 134), as the case may be;
  - (q) a person resident in Singapore who undertakes fund management on behalf of not more than 30 qualified investors having the same meaning as in paragraph 5(3) in Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations 2002;
  - (r) a Service Company which carries on business as an agent of a member of Lloyd's;
  - (s) such other person, who pursuant to the offer or invitation, acquires the units as principal or as a trustee for accounts fully managed by it, and who has been declared by the Authority as an exempt purchaser or is within a class of persons declared by the Authority as exempt purchasers.
- (2) For the purposes of subsection (1)(n), “agent”, in relation to a member of Lloyd's, “Lloyd's”, “member of “Lloyd's” and Service Company” have the same meanings as in regulation 2 of the Insurance (Lloyd's Asia Scheme) Regulations 2002.”.

#### **New section 304A**

**84.** The Securities and Futures Act is amended by inserting, immediately after section 304, the following section:

**“Circumstances in which Subdivisions (2) and (3) would not apply on first sale of units acquired under exemption in section 304**

**304A.**—(1) Where units in a collective investment scheme initially acquired under an exemption in section 304, are first sold to any of the persons specified in that section —

- (a) the offer for sale of, or invitation to purchase, those units made to any of those persons shall not be regarded as an offer or invitation to the public in respect of units in a collective investment scheme; and
- (b) any subsequent offer for sale of, or invitation to purchase, those units in a collective investment scheme made to any of those persons shall not be regarded as an offer or invitation to the public in respect of units in a collective investment scheme.

(2) Where units in a collective investment scheme initially acquired pursuant to an exemption in section 304, are subsequently sold to any person other than those specified in that section, the offer for sale of, or invitation to purchase, those units made to that person shall be regarded as an offer or invitation to the public in respect of units in a collective investment scheme.”.

#### **Amendment of section 305**

**85.** Section 305 of the Securities and Futures Act is amended —

- (a) by inserting the word “and” immediately after the words “dealing in securities;” in the last line of paragraph (ii) of subsection (1);
- (b) by deleting the words “; and” in the last line of paragraph (iii)(B) of subsection (1) and substituting “.”;
- (c) by deleting paragraph (iv) of subsection (1);
- (d) by deleting the words “lodged with the Authority” in the 1st line of the definition of “information memorandum” in subsection (3);
- (e) by deleting the word “ total” in paragraph (b)(i) of the definition of “sophisticated investor” in subsection (3); and
- (f) by deleting the words “a natural person” in paragraph (c) of the definition of “sophisticated investor” in subsection (3) and substituting the words “an individual”.

### **New section 305A**

**86.** The Securities and Futures Act is amended by inserting, immediately after section 305, the following section:

**“Circumstances in which Subdivisions (2) and (3) would not apply on first sale of units acquired under exemption in section 305**

**305A.**—(1) Where units in a collective investment scheme initially acquired under an exemption in section 305, are first sold to any of the persons specified in section 304 or 305 —

- (a) the offer for sale of, or invitation to purchase, those units made to any of those persons shall not be regarded as an offer or invitation to the public in respect of units in a collective investment scheme;
- (b) any subsequent offer for sale of, or invitation to purchase, those units in a collective investment scheme made to any of those persons shall not be regarded as an offer or invitation to the public in respect of units in a collective investment scheme.

(2) Where units in a collective investment scheme initially acquired pursuant to an exemption in section 305, are subsequently sold to any person other than those specified in sections 304 and 305, the offer for sale of, or invitation to purchase, those units made to that person shall be regarded as an offer or invitation to the public in respect of units in a collective investment scheme.”.

### *Division 3 – Securities Hawking*

#### **Amendment of section 309**

**87.** Section 309(7) of the Securities and Futures Act is amended by deleting the word “means” and substituting the word “includes” in paragraph (a).

## PART XIV

### APPEALS

#### Amendment of section 310

88. Section 310 of the Securities and Futures Act is amended by deleting “2” in subsection (2) and substituting “3”.

#### Amendment of section 311

89. Section 311 of the Securities and Futures Act is amended by inserting immediately after the word “years”, “and shall be eligible for reappointment” in subsection (2).

#### New section 312A

90. The Securities and Futures Act is amended by inserting, immediately after section 312, the following section:

##### “Appeal fees

312A.— A person wishing to make an appeal under the Act shall pay to the Authority a fee as the Minister shall prescribe.”

#### Repeal and re-enactment of section 313

91. Section 313 of the Securities and Futures Act is repealed and the following section substituted therefor –

“313.—(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under the Act shall be made;
- (c) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- (d) all matters and things which by this Part are required and permitted to be prescribed or which are necessary or expedient to give effect to the provisions of this Part .”

**PART XV**  
**MISCELLANEOUS**

**Amendment of section 315**

**92.** Section 315 of the Securities and Futures Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) Every exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5(3) or 6(3) or clearing house and every officer or employee thereof, shall preserve and aid in preserving , secrecy, with respect to all matters of the exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5(3) or 6(3) or clearing house, as the case may be.”

**New section 318A.**

**93.** The Securities and Futures Act is amended by inserting, immediately after section 318, the following section:

**“Translation of instruments**

**318A.—** (1) Except as otherwise expressly provided in this Act, where a person submits or furnishes to or lodges with the Authority any book, record, application, return, document, report or other information under this Act which is not in the English language, the person shall submit or furnish to or lodge with the Authority, as the case may be, an accurate translation thereof in the English language at the same time.

(2) Except as otherwise expressly provided in this Act, where a person is required to make available (whether directly or indirectly) for public inspection or otherwise to the public or a section thereof, any document, report, or other book under this Act and the document, report, or other book is not in the English language, the person shall make available at the same time an accurate translation of the document, report, or other book in the English language.

(3) Except as otherwise expressly provided in this Act, where a person is required to maintain or keep any book under this Act and the book or any part of thereof is not maintained or kept in the English language, the person shall –

- (a) cause an accurate translation of that book or that part of the book to be made from time to time at intervals of not more than 7 days; and
  - (b) maintain or keep the translation together with the book for as long as the book is required under this Act to be maintained or kept.
- (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 \$25,000.”

**Repeal and re-enactment of section 320**

**94.** Section 320 of the Securities and Futures Act is repealed and the following section substituted therefor:-

“**320.** (1) Subject to subsection (2), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case.

(2) The Authority shall not appoint any person to exercise the power to make subsidiary legislation under any provision of this Act, but the Authority may appoint one or more of its officers to exercise the power to make subsidiary legislation under any provision of this Act as prescribed by the Authority.

(3) Any person appointed by the Authority under subsection (1) or (2) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).”

**New section 323A.**

**95.** The Securities and Futures Act is amended by inserting, immediately after section 323, the following section:

**“Public interest immunity**

**323A.—**(1) No member of the board (as defined in section 2 of the Monetary Authority of Singapore Act (Cap. 186)), officer or employee of the Authority shall be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by the disclosure.

(2) No member of the board (as defined in section 2 of the Monetary Authority of Singapore Act (Cap. 186)), officer or employee of the Authority shall make discovery of, or produce for inspection, documents or be compelled to give any evidence derived therefrom, or answer interrogatories on any matter, when the Authority considers that the public interest would suffer by the discovery, inspection, testimony or answer.”.

#### **Amendment of section 334**

**96.** Section 334 of the Securities and Futures Act is amended by –

(a) deleting subsection (1) and and the following subsection substituted therefor–

“(1) Where the Authority is satisfied that any person is guilty of misconduct, the Authority may, if it thinks appropriate, reprimand the person.”;

(b) deleting the words “notice, direction,” in paragraph (a)(iii) of subsection (2); and

(c) deleting the definition of “relevant person” in subsection (2).

#### **Amendment of section 337**

**97.** Section 337 of the Securities and Futures Act is amended –

(a) by inserting immediately after subsection (2) the following subsections:

“(3) On the application of any person, the Authority may, by notice in writing, exempt the person from all or any of the requirements specified in any written direction.

(4) An exemption granted under subsection (3) –

(a) may be granted subject to such conditions or restrictions as the Authority may think fit to impose;

(b) shall, for the avoidance of doubt, not be deemed to be subsidiary legislation; and

(c) may be withdrawn at any time by the Authority.”

### **Amendment of section 339**

**98.** Section 339 of the Securities and Futures Act is amended –

(a) by inserting immediately after subsection (2) the following subsection:

“(2A) For the purposes of an action under section 232 or 234 of the Act, where a person does an act –

- (i) partly in and partly outside Singapore which, if done wholly in Singapore, would constitute a contravention of any provision in Part XII, or
- (ii) outside Singapore which has a substantial and reasonably foreseeable effect in Singapore and that act, if carried out in Singapore, would constitute a contravention under any provision of Part XII,

the act shall be treated as being carried out by that person in Singapore.”; and

(b) by inserting immediately after the words” subsection (2)” the words “or (2A)(a).”

### **Amendment of section 341**

**99.** Section 341 of the Securities and Futures Act is amended by –

(a) deleting paragraph (e) of subsection (2);

(b) renumbering paragraphs (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t) and (u) of subsection (2) as paragraphs (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s) and (t) respectively; and

(c) deleting paragraph (b) of subsection (3) and the following paragraphs substituted therefor:

“(b) may provide that a contravention of specified provisions thereof shall be an offence; and

(c) may provide that the offence be punishable with a fine not exceeding \$50,000 or with imprisonment for a term not exceeding 12 months or both, and in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine punishable under that provision for every day thereof during which the offence continues after conviction.”

**SECOND SCHEDULE**  
**REGULATED ACTIVITIES**

**Amendment of Second Schedule**

**100.** The Second Schedule of the Securities and Futures Act is amended by—

- (a) deleting the word “securities” in the 1st line of paragraph (a) of the definition of “securities financing”;
- (b) inserting, immediately after the words “purchase of” in the 1st line of paragraph (a) of the definition of “securities financing, the word “securities”;
- (c) deleting paragraph (ii) of the definition of “securities financing”; and
- (d) renumbering paragraphs (iii), (iv), (v) and (vi) as paragraphs (ii), (iii), (iv) and (v) respectively.

**THIRD SCHEDULE**  
**SPECIFIED PERSONS**

**Amendment of paragraph 8**

**101.** Paragraph 8 in the Third Schedule of the Securities and Futures Act is amended

- (a) by inserting the words “that is authorised under section 286 or recognized under section 287, as the case may be,” immediately after the words “as defined in section 283” in the 1st and 2nd lines of sub-paragraph (1); and
- (b) by inserting the words “that is authorized under section 286 or recognized under section 287, as the case may be,” immediately after the words “as defined in section 283” in the 1 and 2 lines of sub-paragraph (2).