

DRAFT CONSEQUENTIAL AMENDMENTS TO THE SFA

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SECURITIES AND FUTURES ACT

(CHAPTER 289)

PART I

PRELIMINARY

[.....]

PART IV

HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES

[.....]

Removal of officer of holder of capital markets services licence

97.—(1) Notwithstanding the provisions of any other written law —

- (a) a holder of a capital markets services licence shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) a holder of a capital markets services licence which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 9(1)(j) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
 - (A) involving fraud or dishonesty;
 - (B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (ii) is an undischarged bankrupt, whether in Singapore or elsewhere;

- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142), [section \[35\]](#) or section 101A made against him that remains in force; or
- (vi) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (A) which is being or has been wound up by a court; or
 - (B) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[...]

PART XIII OFFERS OF INVESTMENTS

[...]

Disqualification or removal of director or executive officer

292A.—(1) Notwithstanding the provisions of any other written law —

- (a) an approved trustee shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) an approved trustee which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 9(1)(s) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
 - (A) involving fraud or dishonesty;
 - (B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (ii) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142), [section \[35\]](#) or section 101A made against him that remains in force; or
- (vi) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (A) which is being or has been wound up by a court; or
 - (B) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

| [...]

PART XV
MISCELLANEOUS

[...]

Power of Authority to publish information

322. —(1) The Authority may, where it thinks it necessary or expedient in the interest of the public or section of the public or for the protection of investors and in such form or manner as it thinks fit, publish —

- (a) any information relating to an approved exchange, a recognised market operator, an exempt market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, an exempt person, a representative, an approved trustee for a collective investment scheme as defined in section 289 ;
- (aa) any information relating to a holder of a benchmark administration licence, an exempt benchmark administrator, an authorized benchmark submitter, an exempt benchmark submitter, a directed benchmark submitter, a representative of a holder of a benchmark administration licence or an exempt benchmark administrator or an authorised benchmark submitter or an exempt benchmark submitter or a directed benchmark submitter; or
- (b) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

[...]

Power of court to make certain orders

325.—(1) Where —

- (a) on the application of the Authority, it appears to the court that a person —
 - (i) has committed an offence under this Act;
 - (ii) has contravened any condition or restriction of a licence, or the business rules of a securities exchange, a futures exchange, a licensed trade repository or an approved clearing house, or the listing rules of a securities exchange; or
 - (iii) is about to do an act with respect to dealing in securities or trading in futures contracts or administering a financial benchmark or providing information in relation to a financial

benchmark that, if done, would be such an offence or contravention;

- (b) on the application of a securities exchange, it appears to the court that a person has contravened the business rules or listing rules of the securities exchange;
- (c) on the application of a futures exchange, it appears to the court that a person has contravened the business rules of the futures exchange;
- (d) on the application of an approved clearing house, it appears to the court that a person has contravened the business rules of the approved clearing house; or
- (e) on the application of a licensed trade repository, it appears to the court that a person has contravened the business rules of the licensed trade repository,

the court may, without prejudice to any orders it would be entitled to make otherwise than under this section, make one or more of the following orders:

- (i) in the case of a persistent or continuing breach of this Act, or of any condition or restriction of a licence, or of any business rule of a securities exchange, a futures exchange, a licensed trade repository or an approved clearing house, or any listing rule of a securities exchange an order restraining a person from carrying on business to deal in securities or trade in futures contracts, or acting as a representative of such a person, or administering a financial benchmark, or providing information in relation to a financial benchmark or from holding himself out as so carrying on business or so acting;
- (ii) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities or trading in any futures contracts, dministering a financial benchmark or providing information in relation to a financial benchmark that are specified in the order;
- (iii) an order appointing a receiver of the property of the holder of a capital markets services licence to deal in securities or trade in futures contracts or of property that is held by such a holder for or on behalf of another person whether on trust or otherwise;
- (iv) an order declaring a contract relating to any dealing in securities or trading in futures contracts or the referencing of any financial benchmarks to be void or voidable;
- (v) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

- (vi) any ancillary order deemed to be desirable in consequence of the making of any of these orders.

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

[...]

Falsification of records by officer, employee or agent of relevant person

328. —(1) Any officer, auditor, employee or agent of any relevant person who —

- (a) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person;
- (b) wilfully omits to make, or causes to be omitted, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person; or
- (c) wilfully alters, extracts, conceals or destroys, or causes to be altered, extracted, concealed or destroyed, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1) —

“officer” includes a person purporting to act in the capacity of an officer;

“relevant person” means any approved exchange, recognised market operator, exempt market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, holder of a capital markets services licence to carry on business in any regulated activity, exempt person, representative, or approved trustee for a collective investment scheme as defined in section 289, holder of a benchmark administration licence, an exempt benchmark administrator, an authorized benchmark submitter, an exempt benchmark submitter, or a directed benchmark submitter.

[...]

Offences by officers

332. —(1) Any person, being an officer of an approved holding company, a securities exchange, a futures exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, ~~or~~ a holder of a capital markets services licence or holder of a benchmark administration licence, an exempt benchmark administrator, an authorized benchmark submitter, an exempt benchmark submitter, or a directed benchmark submitter to carry on business in any regulated activity, who fails to take all reasonable steps to secure —

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

[...]

Power of Authority to reprimand for misconduct

334. —(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interest of the public, or a section of the public or for the protection of investors, reprimand the relevant person.

(2) In this section —

“misconduct” means —

- (a) the contravention of —
 - (i) any provision of this Act;
 - (ii) any condition or restriction imposed under this Act;
 - (iia) any direction made by the Authority under this Act;
 - (iii) any code, guideline, policy statement or practice note issued under section 321; or
 - (iv) any business rules of a securities exchange, a futures exchange, a licensed trade repository or an approved clearing house, or the listing rules of a securities exchange;
- (b) the failure by an officer of a relevant person to discharge any duty or function of his office; or

(c) the commission of an offence under section 331 or 332(1);

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“relevant person” means an approved exchange, a recognised market operator, an exempt market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, an exempt person, an approved trustee for a collective investment scheme as defined in section 289, holder of a benchmark administration licence, an exempt benchmark administrator, an authorized benchmark submitter, an exempt benchmark submitter, a directed benchmark submitter, or any employee, officer, partner or representative thereof.

[...]

Power to make regulations giving effect to treaty, etc., relating to securities or futures

338. —(1) Without prejudice to the generality of section 341, the Authority may make regulations prescribing the matters necessary or expedient to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the securities, futures, ~~or~~ derivatives industry or financial benchmarks, to which Singapore or the Authority is a party.

[...]