

**DRAFT AMENDMENTS TO PART IX, X & XII OF THE SFA**

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

**SECURITIES AND FUTURES ACT**

**(CHAPTER 289)**

PART I

PRELIMINARY

[.....]

PART IX

SUPERVISION AND INVESTIGATION

*Division 1 — Supervisory Powers*

*Subdivision (1) — Powers of Authority to require disclosure of information about securities and futures contracts*

[.....]

**Exercise of certain powers in relation to financial benchmarks (s.144A)**

**144A.—(1) This section shall apply where the Authority considers that —**

- (a) it may be necessary to issue written directions in relation to any designated benchmark; or
- (b) a person may have contravened any of the provisions of Part XII in relation to a financial benchmark.

(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) administering a financial benchmark;
- (b) providing information in relation to a financial benchmark;
- (c) the financial position of any holder of a benchmark administrator licence, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter, or directed benchmark submitter ;
- (d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons, at least one of whom is a person referred to in that paragraph; or

- (e) an audit of, or any report of an auditor concerning, any book of any holder of a benchmark administrator licence, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter, or directed benchmark submitter being a book relating to a designated benchmark,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[.....]

### **Self-incrimination**

**145.** —(1) A person is not excused from disclosing information to the Authority, under a requirement made of him under section 142, 143 ~~or~~, 144 or 144A, on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to disclose by a requirement made of him under section 142, 143 ~~or~~, 144 or 144A, that the statement might tend to incriminate him, that statement —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under section 148; but
- (b) shall be admissible in evidence for civil proceedings under Part XII.

### **Savings for advocates and solicitors**

**146.** —(1) Nothing in this Subdivision shall compel the disclosure by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), of information containing a privileged communication made by or to him in that capacity.

(2) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to disclose the information referred to in subsection (1) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

### **Immunities**

**147.** —(1) No civil or criminal proceedings, other than proceedings for an offence under section 148, shall lie against any person for disclosing any information to the

Authority if he had done so in good faith in compliance with a requirement of the Authority under section 142, 143~~–or~~, 144 or 144A.

(2) Any person who complies with a requirement of the Authority under section 142, 143~~–or~~, 144 or 144A shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

## **Offences**

**148.**—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under section 142, 143~~–or~~, 144 or 144A shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(2) A person who, in purported compliance with a requirement of the Authority under section 142, 143~~–or~~, 144 or 144A, discloses information, or makes a statement, that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

## **Copies of or extracts from documents to be admitted in evidence**

**149.**—(1) Subject to this section, a copy of or extract from a document produced under this Subdivision that is proved to be a true copy of the document or of the relevant part of the document is admissible in evidence as if it were the original document or the relevant part of the original document.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a document is a true copy of the document or of a part of the document may be given by a person who has compared the copy or extract with the document or the relevant part of the document and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

*Subdivision (2) — Inspection powers of Authority***Inspection by Authority**

**150.** —(1) The Authority may inspect under conditions of secrecy, the books of 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, the holder of a capital markets services licence, an exempt person, a holder of a benchmark administration licence, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter, a directed benchmark submitter, or a representative.

(2) For the purpose of an inspection under this section —

- (a) a person referred to in subsection (1) or any person in possession of the books, shall produce such books to the Authority and give such information and facilities as may be required by the Authority; and
- (b) a person referred to in subsection (1) shall procure that any person who is in possession of such books produce the books to the Authority and give such information and facilities as may be required by the Authority.

(3) The Authority may —

- (a) make copies of, or take possession of, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and
- (c) retain possession of any of the books for so long as is necessary —
  - (i) for the purposes of exercising a power conferred by this section (other than subsection (5));
  - (ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or
  - (iii) for such proceedings to be instituted and carried on.

(4) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority, the Authority —

- (a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and
- (b) may permit another person to inspect any of the books.

(6) The Authority may require a person who produced any of the books to the Authority to explain to the best of his knowledge and belief any matter about the compilation of the books or to which the books relate.

(7) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Sections 146 and 147 shall, with the necessary modifications, apply in relation to the production of any book or disclosure of any information to the Authority under this section.

(9) Section 149 shall, with the necessary modifications, apply in relation to a copy of, or extract from, a book inspected under this section.

### **Confidentiality of inspection reports**

**150A.** —(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an inspection under section 150 in respect of 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, exempt person, a holder of a benchmark administration licence, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter, a directed benchmark submitter, or a representative (referred to in this section as the inspected person) and is provided by the Authority to the inspected person, the report shall not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that inspected person;

- (b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person; or
- (c) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

- (a) the disclosure was made contrary to his desire;
- (b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- (c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

*Subdivision (3) — Inspection powers of foreign regulatory authority*

**Inspection by foreign regulatory authority**

**150B.** – (1) No authority of a country or territory other than Singapore may conduct an inspection in Singapore of the books of —

- (a) the holder of a capital markets services licence; ~~or~~

- (b) a person exempted under section 99(1)(a), (b), (c), (d) or (h) from the requirement to hold a capital markets services licence, or
- (c) a holder of a benchmark administration licence, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a directed benchmark submitter,

except a foreign regulatory authority with the prior written approval of the Authority and under conditions of secrecy.

(2) In deciding whether to grant approval to a foreign regulatory authority under subsection (1), the Authority may have regard to the following considerations:

- (a) whether the inspection, and the information obtained in the course of the inspection, is required by the foreign regulatory authority for the sole purpose of enabling the foreign regulatory authority to carry out its regulatory functions;
- (b) whether the foreign regulatory authority has regulatory oversight in its jurisdiction over the holder of the capital markets services licence, ~~or~~ the person exempted under section 99(1)(a), (b), (c), (d) or (h) or a holder of a benchmark administration licence, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a directed benchmark submitter, as the case may be;
- (c) whether the foreign regulatory authority is prohibited by the laws applicable to it from disclosing information obtained by it in the course of the inspection to any other person;
- (d) whether the foreign regulatory authority has provided or is willing to provide similar assistance to the Authority; and
- (e) such other matters as the Authority may consider relevant.

(3) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, impose conditions or restrictions on the foreign regulatory authority relating to —

- (a) the classes of information to which the foreign regulatory authority shall or shall not have access in the course of the inspection;
- (b) the conduct of the inspection;
- (c) the use or disclosure of any information obtained in the course of the inspection; and
- (d) such other matters as the Authority may determine.



(4) The Authority may, in relation to an inspection by a foreign regulatory authority conducted or to be conducted under this section on the holder of a capital markets services licence, ~~or~~ a person exempted under section 99(1)(a), (b), (c), (d) or (h) or a holder of a benchmark administration licence, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a directed benchmark submitter at any time, by notice in writing to the holder or person exempted, impose such conditions or restrictions on the holder or person exempted as it may think fit, and the holder or person exempted shall comply with such conditions or restrictions.

(5) For the purposes of this section and section 150C, a reference to a foreign regulatory authority is a reference to an authority of a country or territory other than Singapore, exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act (Cap. 186).

### **Confidentiality of inspection report by foreign regulatory authority**

**150C.**—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by a foreign regulatory authority upon an inspection under section 150B in respect of any holder of a capital markets services licence, ~~or~~ person exempted under section 99(1)(a), (b), (c), (d) or (h), or a holder of a benchmark administration licence, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a directed benchmark submitter (referred to in this section as the inspected person) and is provided by the foreign regulatory authority to the inspected person, the report shall not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that inspected person;
- (b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person;
- (c) to the Authority, if requested by the Authority; or
- (d) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(d), the Authority may impose such conditions or restrictions as it thinks fit on the inspected

person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

- (a) the disclosure was made contrary to his desire;
- (b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- (c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

*Division 2 — Power of Minister to Appoint  
Inspector for Investigating Dealings  
in Securities, etc.*

**Power of Minister to appoint inspectors**

**151.**—(1) Notwithstanding anything in this Act, the Minister may, if he thinks it in the public interest to do so, appoint any person as an inspector to investigate any matter concerning dealing in securities, trading in futures contracts, ~~or~~ leveraged foreign exchange trading, administering a financial benchmark or providing information in relation to a financial benchmark.

(2) An inspector appointed under subsection (1) shall have all the powers conferred upon an inspector under Part IX of the Companies Act (Cap. 50) and that Part shall, with the necessary modifications, apply to such investigation.

(3) Any inspector appointed under subsection (1) shall report the results of his investigation to the Minister and the Minister may, if he thinks it in the public interest to do so, cause the report to be printed and published.

[.....]

## PART X

### ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

#### **Interpretation of this Part**

**169.** In this Part, unless the context otherwise requires —

“enforce” means enforce through criminal, civil or administrative proceedings;

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the securities, futures or derivatives industry or financial benchmarks of the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the securities, futures or derivatives industry or financial benchmarks of the foreign country of the regulatory authority concerned;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of —

- (a) a person operating a securities market or futures market, an intermediary or any other person regulated by the regulatory authority;

- (b) the issuance of or trading in securities, or the trading in futures contracts in the foreign country of the regulatory authority; or
- (c) a person carrying out activities relating to a financial benchmark in the foreign country of the regulatory authority.

[.....]

## PART XII MARKET CONDUCT

[.....]

### Division [2A] — Prohibited Conduct — Financial Benchmarks

#### **Application of this Division**

**212A.** “This Division shall apply to —

- (a) acts occurring within Singapore in relation to financial benchmarks, whether administered in Singapore or elsewhere; and
- (b) acts occurring outside Singapore, in relation to financial benchmarks which are administered in Singapore.

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

**212B.** In this Division –

“public authority” means any government, board, body or authority established by or under any written law to perform or discharge any public function.

#### **Financial benchmarks manipulation (s197 representative provision)**

**212C.–** (1) No person shall do any thing, cause any thing to be done or engage in any course of conduct, if his purpose, or any of his purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, is to create a false or misleading appearance, directly or indirectly, as to the price, value, performance or rate of any financial benchmark.

(2) No person shall do any thing, cause any thing to be done or engage in any course of conduct, directly or indirectly, that creates or is likely to create a false or misleading appearance, as to the price, value, performance or rate of any financial benchmark, if -

- (a) he knows that doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create or is likely to create a false or misleading appearance; or
- (b) is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct, will create or is likely to create a false or misleading appearance.

**Exception for conduct pursuant to policy requirement (tied to the s197 representative provision)**

212D. Section 212C shall not apply in respect of any thing done or to be done or any course of conduct engaged by or by a person acting on behalf of a public authority or international organisation, whether in Singapore or elsewhere, in pursuit of monetary policy or policies with respect to exchange rates or the management of public debt or foreign exchange reserves or for the purpose of managing the price or value of any product, item, goods or article.

**False or misleading statements (s199 representative provision)**

212E. No person shall make a statement, provide or disseminate any information or expression of opinion, that is false or misleading and is likely to affect any matters relating to the process of administering a financial benchmark if, when he makes the statement, provides or disseminates the information or expression of opinion –

- (a) he intends that the false or misleading statement, information or expression of opinion be used for the purpose of administering a financial benchmark;
- (b) he knows or ought reasonably to have known that the statement, information or expression of opinion is false or misleading; or
- (c) he is reckless as to whether the statement, information or expression of opinion is false or misleading.

**Penalties under this Division**

212F. —(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

- (a) a court has made an order against him for the payment of a civil penalty under section 232; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

| [...]