

CONSULTATION PAPER

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Annex 1

Draft Securities and Futures (Amendment) Bill 2004

MAS

Monetary Authority of Singapore

Securities and Futures (Amendment) Bill

Bill No. /2004.

Read the first time on

2004.

Disclaimer: This version of the Bill is subject to change. It is also subject to vetting by the Attorney-General's Chambers.

Note:

(1) The numberings of the sections and subsections in the draft Bill have not been finalised.

(2) A comparative table that sets out the proposed amendments in the draft Bill with reference to the existing provisions in the Act is attached at Annex 2.

A BILL

i n t i t u l e d

AN ACT TO AMEND SECURITIES AND FUTURES ACT (CAP. 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 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the Securities and Futures Act (referred to in this Act as the principal Act) is amended -

(a) by deleting the definition of “accredited investor” in subsection (1) and substituting the following definitions:

“ “account holder” means a person who holds an account with an approved exchange or a designated clearing facility;

“account information” means information relating to any:-

- (a) securities;
- (b) positions in securities; or
- (c) positions in futures contracts,

held in an account with an approved exchange or a designated clearing facility, as the case may be;

(b) by inserting, immediately after the definition of “advocate and solicitor” in subsection (1), the following definitions:

“ “approved exchange” means a corporation that is approved by the Authority under section 8(1) as an approved exchange;

“approved holding company” means a corporation that is approved by the Authority under section 81C as an approved holding company;”;

(c) by inserting, immediately after the definition of “capital markets services licence” in subsection (1), the following definition:

““chief executive officer”, in relation to an approved exchange, a recognised market operator, a designated clearing house, a person operating a clearing facility, an approved holding company or a holder of a capital market services licence, means any person, by whatever name described, who is -

- (a) in the direct employment of, or acting for or by arrangement with, the approved exchange, the recognised market operator, the designated clearing house, the person operating the clearing facility, the approved holding company or the holder of a capital market services licence, as the case may be; and
- (b) principally responsible for the management and conduct of the business of the approved exchange, the recognised market operator, the designated clearing house, the clearing facility, the approved holding company or the holder of a capital market services licence, as the case may be, in Singapore;”;

(d) by deleting the definition of “clearing facility” in subsection (1) and substituting the following definition:

““clearing facility” has the meaning given to it in Part II of the First Schedule;”;

(e) by deleting the definition of “clearing house” in subsection (1) and substituting the following definition:

““clearing or settlement” has the meaning given to it in Part II of the First Schedule;”;

(f) by deleting the definition of “closed-end fund” in subsection (1) and substituting the following definition:

““closed end fund” means an arrangement referred to in paragraph (a) or (b) of the definition of “collective investment scheme” under which units that are exclusively or primarily non-redeemable are issued, but does not include an arrangement referred to in paragraph (a) of that definition that –

- (a) is a trust;
- (b) invests only in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
- (c) is listed on a securities exchange;”;

(g) by deleting sub-paragraphs (x) and (xi) of the definition of “collective investment scheme” in subsection (1) and substituting the following sub-paragraph:

“(x) a closed-end fund constituted either as an entity within the meaning of section 283(1) or a trust; or”;

(h) by deleting the definition of “commodity” in subsection (1) and substituting the following definition:

“ “commodity” in relation to a futures contract, means

(a) a financial instrument; or

(b) gold;”;

(i) by inserting, immediately after the definition of “defalcation” in subsection (1), the following definitions:

“default rules”, in relation to a designated clearing house, means its business rules which provide for the taking of proceedings or other action if a participant has failed, or appears to be unable, or likely to become unable, to meet his obligations for all unsettled or open market contracts to which he is a party;

“designated clearing house” means a person that is designated by the Authority under section 58 as a designated clearing house;”;

(j) by deleting the definitions of “exchange holding company” and “exempt clearing facility” in subsection (1);

(k) by deleting the definition of “exempt market” in subsection (1) and substituting the following definition:

“ “exempt market operator” means a corporation that is exempted under section 13(1), or a corporation operating a market included in a class of markets in relation to which a declaration under section 13(3) is in force;”;

(l) by deleting the definition of “futures contract” in subsection (1) and substituting the following definition:

“ “futures contract” –

(a) for the purposes of Parts IV, V, VI and VII, has the meaning given to it in Part II of the Second Schedule; and

(b) for the purposes of any other provision in this Act, means –

(i) a contract the effect of which is that –

(A) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time; or

(B) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time,

and includes a futures option transaction; and such other contract or classes of contracts as the Authority may prescribe;”;

(m) by deleting the definition of “futures exchange” in subsection (1) and substituting the following definition:

“ “futures exchange” means an approved exchange in respect of the operation of its futures market;”;

(n) by inserting, immediately after the definition of “manager” in subsection (1), the following definition:

“ “market” has the meaning given to it in Part I of the First Schedule;”;

(o) by deleting the definition of “participant” in subsection (1) and substituting the following definition:

“ “participant” means –

- (a) for the purposes of Part II, a person who may participate in one or more of the services provided by an approved exchange, a recognised market operator or an exempt market operator, in its capacity as an approved exchange, a recognised market operator or an exempt market operator respectively;
- (b) for the purposes of Part III, a person who, under the business rules of a designated clearing house, may participate in one or more of the services provided by the designated clearing house in its capacity as a designated clearing house; or
- (c) for the purposes of any other provision in this Act, a person who participates in a collective investment by way of owning one or more units in a collective investment scheme;”;

(p) by deleting the definition of “recognised system trading provider” in subsection (1) and substituting the following definition:

“ “recognised market operator” means a corporation that is recognised by the Authority under section 8(1A) as a recognised market operator;”;

(q) by inserting, immediately after the definition of “representative’s licence” in subsection (1), the following definition:

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

- (a) in the case of a scheme which is constituted as a corporation, the corporation; or
- (b) in the case of a scheme which is not constituted as a corporation, the manager for the scheme;”;

(r) by deleting paragraph (i) of the definition of “securities” in subsection (1) and substituting the following paragraph:

“(i) futures contracts which are traded on a futures market;”;

(s) by deleting the definition of “securities exchange” in subsection (1) and substituting the following definition:

“ “securities exchange” means an approved exchange in respect of the operation of its securities market;”;

(t) by inserting, immediately after the definition of “trading in futures contracts” in subsection (1), the following definition:

“ “transaction information” means information relating to:

- (a) offers or invitations –
 - (i) to purchase, sell, borrow or lend securities; or,
 - (ii) to purchase, sell or exchange futures contracts;
- (b) executed trades;
- (c) borrowing or lending transactions; or
- (d) transfers of securities between accounts or positions in securities or futures contracts;”;

(u) by inserting, immediately after the definition of “unit” in subsection (1), the following definitions:

“ “user” means–

- (a) a person who is a member or an account holder of an approved exchange or a designated clearing house;
- (b) a person who is a customer of a member of an approved exchange or a designated clearing house; or who holds a sub-account with an account-holder of an approved exchange or designated clearing house; or
- (c) any other person whose account information or transaction information may be accessed by an approved holding company, an approved exchange or a designated clearing house;

“user information” means account information, transaction information, or personal particulars –

- (a) that is referable to a named user or group of named users; or
- (b) from which the identity of a user or group of users may be reasonably derived,

but excludes particulars of a representative of a member of an approved exchange or a designated clearing house pertaining to the approval, registration or cessation of that person as a representative;” and

(v) by inserting, immediately after subsection (1), the following subsection:

“(1A) For the purposes of the definition of “user information” in subsection (1), the reference to “representative” means any person described as a representative in the business rules of an approved exchange or a designated clearing house, as the case may be.”.

New section 4A

3. The principal Act is amended by inserting immediately after section 4, the following section:

“Specific classes of investors

4A. –(1) Subject to subsection (2), in this Act, unless the context otherwise requires –

(a) “accredited investor” means –

- (i) an individual whose net personal assets exceed \$2 million in value (or its equivalent in a foreign currency) or such other amount as may be prescribed in place of that first amount, or whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) or such other amount as may be prescribed in place of that first amount;
- (ii) a corporation with net assets exceeding \$10 million in value (or its equivalent in a foreign currency) or such other amount as may be prescribed in place of that first amount, as determined by -

(A) where the corporation is required to prepare audited accounts regularly, the most recent audited balance-sheet of the corporation; or

(B) where the corporation is not required to prepare audited accounts regularly, a balance sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance sheet, which is a date within the preceding 12 months; or

(iii) such other person as the Authority may prescribe;

(b) “expert investor” means –

(i) a person whose business involves the acquisition and the disposal or holding of capital markets products, whether as principal or agent; or

(ii) such other person as the Authority may prescribe;

(c) “institutional investor” means –

(i) a bank that is licensed under the Banking Act (Cap. 19);

(ii) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);

(iii) a finance company that is licensed under the Finance Companies Act (Cap. 108);

(iv) a company or society registered under the Insurance Act (Cap. 142) as an insurer;

(v) a company registered under the Trust Companies Act (Cap. 336);

(vi) the Government;

(vii) a statutory body established under any Act in Singapore;

(viii) a pension fund or collective investment scheme;

(ix) the holder of a capital markets services licence for -

(A) dealing in securities;

(B) fund management;

(C) providing custodial services for securities;

(D) securities financing; or

(E) trading in futures contracts;

(x) a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors; or

(xi) such other person as the Authority may prescribe.

(2) The definitions in subsection (1) may be subject to such modifications as the Authority may prescribe for specified provisions of the Act.

Amendment of Part II of principal Act

4. The principal Act is amended by deleting Part II and substituting the following Part therefor:

“Part II

Markets

Objectives of this Part

5. The objectives of this Part are to –
- (a) promote fair, orderly and transparent markets;
 - (b) reduce systemic risk; and
 - (c) facilitate efficient markets for the allocation of capital and transfer of risks.

Division 1 – Establishment of Markets

Requirement for approval or recognition

6.-(1) No person shall establish or operate a market, or hold himself out as operating a market, unless the person is -

- (a) an approved exchange; or
- (b) a recognised market operator.

(2) Except with the written approval of the Authority, no person, other than an approved exchange, shall –

- (a) take or use, or have attached to or exhibited at any place, the title or description “securities exchange”, “stock exchange”, “futures exchange”, or “derivatives exchange” in any language; or
- (b) take or use, or have attached to or exhibited at any place, any title or description which resembles a title or description specified in paragraph (a) or which so closely resembles such title or description as to be calculated to deceive.

(3) No person shall hold himself out as an approved exchange or a recognised market operator unless he is an approved exchange or a recognised market operator.

(4) 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 \$250,000 or to imprisonment for a term not exceeding 3 years of both 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.

(5) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

Subdivision 1: Approved Exchange and Recognised Market Operator

Application for approval or recognition

7.-(1) A corporation may apply to the Authority to be –

(a) approved as an approved exchange; or

(b) recognised as a recognised market operator.

(2) An application made under subsection (1) shall be made in such form and manner as the Authority may prescribe, and accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

(3) The Authority may require an applicant to furnish it with such information or documents as the Authority considers necessary in relation to the application.

Annual fees

7A.-(1) Every approved exchange and recognised market operator shall pay to the Authority such annual fees as may be prescribed.

(2) The Authority may prescribe different annual fees for approved exchanges and recognised market operators.

(3) The annual fees shall be paid in such manner as may be specified by the Authority.

(4) The Authority may exempt, wholly or in part, any approved exchange or recognised market operator from the payment of the annual fees prescribed under this section.

(5) The Authority may, where it considers appropriate, refund the whole or part of any annual fee paid to it.

Power of Authority to approve exchanges and recognise market operators

8.-(1)Where–

- (a) an application is made under section 7(1)(a);
- (b) an application for a change of status to be an approved exchange is made under section 10(1); or
- (c) the Authority has conducted a review under section 10(4) and determines that the corporation would be more appropriately regulated as an approved exchange,

the Authority may approve the corporation as an approved exchange.

(1A) Where–

- (a) an application is made under section 7(1)(b);
- (b) an application for a change of status to be a recognised market operator is made under section 10(1); or
- (c) the Authority has conducted a review under section 10(4) and determines that the corporation would be more appropriately regulated as a recognised market,

the Authority may recognise the corporation as a recognised market operator.

(1B) Notwithstanding subsections (1) and (1A), the Authority may –

- (a) treat, with the consent of the applicant, an application under section 7(1)(a) as an application under section 7(1)(b) if it is of the view that the applicant would be more appropriately regulated as a recognised market operator; or
- (b) treat, with the consent of the applicant, an application under section 7(1)(b) as an application under section 7(1)(a) if it is of the view that the applicant would be more appropriately regulated as an approved exchange.

(2) The Authority may approve a corporation under subsection (1) or recognise a corporation under subsection (1A) subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing, including conditions or restrictions relating to –

- (a) the activities that the corporation may undertake;
- (b) the securities or futures contracts that may be traded on the market; and
- (c) the nature of the investors or participants who may use, invest in or participate in the securities or futures contracts traded on the market.

(3) The Authority may, at any time, by notice in writing to the corporation, vary any condition or restriction or impose such further condition or restriction as it may think fit.

(4) An approved exchange or a recognised market operator shall, for the duration of the approval or recognition, continue to satisfy such conditions or restrictions imposed on it under subsection (2) or (3).

(5) The Authority may refuse to approve or recognise the corporation if:

- (a) the corporation has not provided the Authority with such information relating to it or any person employed by or associated with it for the purposes of its business, or relating to any circumstances likely to affect its manner of conducting business, as the Authority may require;
- (b) the corporation provided false or misleading information to the Authority;
- (c) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) a receiver, receiver and manager, judicial 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 or its substantial shareholder;
- (f) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) the corporation or its substantial shareholder, or any officer of the corporation —
 - (i) 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 or he acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (h) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the corporation having regard to the nature of the duties they are to perform in connection with the operation or establishment of the market;
- (i) the corporation fails to satisfy the Authority that it is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

- (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;
- (k) the Authority is not satisfied as to the financial standing of the corporation or any of its substantial shareholders or the manner in which the corporation's business is to be conducted;
- (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation having regard to the nature of the business which the corporation may carry on in connection with the operation or establishment of its market;
- (m) there are other circumstances which are likely to —
 - (i) lead to the improper conduct of business by the corporation, or any of its officers, employees or substantial shareholders; or
 - (ii) reflect discredit on the manner of conducting the business of the corporation or any of its substantial shareholders;
- (n) the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a fair, orderly and transparent market;
- (o) the corporation does not satisfy the criteria prescribed under section 9 to be approved as an approved exchange or recognised as a recognised market operator, as the case may be;
- (p) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

(6) Subject to subsection (7), the Authority shall not refuse to approve or recognise a corporation under subsection (5) without giving the corporation an opportunity to be heard.

(7) The Authority may refuse to approve or recognise a corporation on the basis of 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 an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation; or
- (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 had acted fraudulently or dishonestly.

(8) The Authority shall give notice in the *Gazette* of any corporation approved under subsection (1) or recognized under subsection (1A).

(9) An applicant that is aggrieved by the refusal of the Authority to grant an approval or recognition, may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(10) Any corporation which contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

General criteria to be taken into account by the Authority

9. (1)- The Authority may prescribe the criteria that it may take into account for the purposes of deciding:

- (a) whether an applicant referred to in section 7 (1) or 10 (1) should be approved as an approved exchange or recognised as a recognised market operator;
- (b) whether an approved exchange or a recognised market operator that is subject to a review by the Authority under section 10 (4) should be approved as an approved exchange or recognised as a recognised market operator; or
- (c) the conditions or restrictions that the Authority may impose under section 8 (2) or (3).

(2) Without prejudice to section 8 and subsection (1), the Authority may, for the purposes of recognising an operator of an overseas market as a recognised market operator under section 8 (1A), have regard, in addition to any criteria prescribed under subsection (1), to whether —

- (a) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the operator in the country or territory in which the operator's head office is situated, or the country or territory of the operator's principal place of business; and
- (b) the requirements and supervision that the operator is subject to, achieve the objectives referred to in section 5 to a sufficiently equivalent degree.

(3) In considering whether it is satisfied that the operator of an overseas market has met the requirements mentioned in subsection (2), the Authority may have regard to —

- (a) the relevant laws and practices of the country or territory in which the operator's head office or principle place of business is situated; and

(b) the rules and practices of the operator.

(4) For the purposes of this section, an “operator of an overseas market” means a person whose head office is situated in a country or territory outside Singapore, and is authorised to operate a market by a financial services regulatory authority of that country or territory, or the country or territory of its principal place of business.

Change in status

10.(1) An approved exchange or a recognised market operator may apply to the Authority for conversion of its status in the manner referred to in subsection (5).

(2) An application made under subsection (1) shall be in such form and manner as the Authority may prescribe, and be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

(3) The Authority may require an applicant to furnish it with such information or documents as the Authority considers necessary in relation to the application.

(4) The Authority may, from time to time, on its own initiative review the status of an approved exchange or a recognised market operator under this Part in accordance with the criteria prescribed under section 9.

(5) Where an application is made under subsection (1) or where a review is conducted by the Authority under subsection (4), the Authority may –

(a) in the case of an approved exchange, withdraw the approval, and recognise the corporation as a recognised market operator under section 8 (1A);

(b) in the case of a recognised market operator, withdraw the recognition, and approve the corporation as an approved exchange under section 8 (1); or

(c) make no change to the status of an approved exchange or recognised market operator.

(5A) Where an application is made under subsection (1), the Authority shall not exercise its powers under subsection (5)(c) without giving the corporation an opportunity to be heard.

(6) Where a review is conducted by the Authority on its own initiative under subsection (4), it shall not exercise its powers under subsection 5(a) or (b) without giving the corporation an opportunity to be heard.

(7) A corporation which is aggrieved by a decision of the Authority in relation to it after a review under subsection (4) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

Cancellation of approval or recognition

10A.(1) An approved exchange or a recognised market operator may apply to the Authority to cancel its approval or recognition, as the case may be.

(2) The Authority may cancel the approval or recognition if it is satisfied that the approved exchange or recognised market referred to in subsection (1) has ceased operating its market.

Power of Authority to revoke approval and recognition

11.-(1) The Authority may revoke any approval or recognition if —

- (a) any event has occurred which would have entitled the Authority to refuse an application under section 8(5) by the corporation if such an application were made after such occurrence;
- (b) the corporation does not commence operating its market within 12 months from the date that it was granted the approval under section 8(1) or recognition under section 8(1A), as the case may be;
- (c) the corporation ceases to operate its market;
- (d) the corporation contravenes any condition or restriction applicable in respect of its approval or recognition, as the case may be, any direction issued to it by the Authority under this Act or any provision in this Act;
- (e) the corporation is operating in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or
- (f) any information provided by the corporation to the Authority under this Act is false or misleading.

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any approval or recognition granted to a corporation without giving the corporation an opportunity to be heard.

(3) The Authority may revoke an approval or recognition granted to a corporation 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 an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation; or
- (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 had acted fraudulently or dishonestly.

(4) For the purposes of subsection (1)(c), a person shall be deemed to have ceased to operate its market if -

- (a) it has ceased to operate the market for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or
- (b) it has ceased to operate the market under a direction issued by the Authority under section 49.

(5) A corporation which is aggrieved by the decision of the Authority made in relation to it under subsection (1) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(6) Notwithstanding the lodging of an appeal under subsection (5), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister or withdrawal of the appeal.

(7) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

(8) Any revocation of approval or recognition referred to in subsection (1) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on the market operated by the corporation, whether the agreement, transaction or arrangement was entered into before or after the revocation of the approval or recognition; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

(9) The Authority shall give notice in the *Gazette* of any revocation of approval or recognition referred to in subsection (1).

Subdivision 2: Exempt Market Operator

Power of Authority to exempt corporations from approval or recognition

13.-(1) A corporation may apply to the Authority, in such form and manner as the Authority may prescribe, to be exempted from the requirement under section 6(1) or (3) to be an approved exchange or a recognised market.

(1A) The Authority may exempt the corporation referred to in subsection (1) if in the Authority's opinion, the objectives referred to in section 5 can be achieved without regulating the corporation as an approved exchange or recognised market operator.

(1B) The Authority may require an applicant to furnish it with such information or documents as the Authority considers necessary in relation to the application.

(1C) The Authority may, by notice in writing, impose such conditions or restrictions as the Authority thinks fit, including conditions or restrictions relating to –

- (a) the activities that the corporation may undertake;
- (b) the securities or futures contracts that may be traded on the market; and
- (c) the nature of the investors or participants who may use, participate or invest in the securities or futures contracts traded on the market.

(2) The Authority may, at any time, by notice in writing to the corporation, vary any condition or restriction or impose such further condition or restriction as it may think fit.

(3) The Authority may declare corporations operating any class of markets to be exempt market operators subject to such conditions or restrictions as the Authority may think fit to impose by regulations.

(4) An exempt market operator shall continue to satisfy the conditions or restrictions imposed on it under subsection (1C), (2) or (3).

(4A) The Authority shall give notice in the *Gazette* of any corporation exempted under subsection (1A).

(5) Any corporation which contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to revoke exemption

15. (1) The Authority may revoke any exemption granted to a corporation under section 13 (1) if —

- (a) the corporation does not commence operating its market within 12 months from the date that it was granted the exemption;
- (b) the corporation ceases to operate its market;
- (c) the corporation contravenes any condition or restriction applicable in respect of its exemption, or any direction issued to it by the Authority under this Act;
- (d) the corporation is operating in a manner that is, in the opinion of the Authority, contrary to the interests of the public;

- (e) the Authority is of the view that the corporation would be more appropriately regulated as an approved exchange or a recognised market operator; or
- (f) any information provided by the corporation to the Authority under this Act is false or misleading.

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any exemption granted to a corporation without giving the corporation an opportunity to be heard.

(3) The Authority may revoke an exemption granted to a corporation on the ground that the corporation is operating in a manner that is contrary to the interests of the public without giving the corporation an opportunity to be heard 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; or
- (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 had acted fraudulently or dishonestly.

(4) For the purposes of subsection (1)(b), a person shall be deemed to have ceased to operate its market if -

- (a) it has ceased to operate the market for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or
- (b) it has ceased to operate the market under a direction issued by the Authority under section 49.

(5) A corporation which is aggrieved by the decision of the Authority made in relation to it under subsection (1) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(6) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister or withdrawal of the appeal.

(7) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

(8) Any revocation referred to in subsection (1) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on the market operated by the corporation, whether the

agreement, transaction or arrangement was entered into before or after the revocation of the approval or recognition; or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

(9) The Authority shall give notice in the *Gazette* of any revocation of exemption referred to in subsection (1).

Division 2 – Regulation of Approved Exchanges

Subdivision 1: Obligations of Approved Exchanges

General obligations

18.-(1) An approved exchange shall -

(a) as far as is reasonably practicable, operate a fair, orderly and transparent market;

(b) manage any risks associated with its business and operations prudently;

(c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;

(d) ensure that access for participation in its facilities is subject to criteria that are fair and objective, and designed to ensure the orderly functioning of its market and protect the interests of the investing public;

(e) maintain business rules and, where appropriate, listing rules that make satisfactory provision for —

(i) a fair, orderly and transparent market in securities or futures contracts that are traded through its facilities; and

(ii) the proper regulation and supervision of its members;

(f) enforce compliance by its members with its business rules and, where appropriate, its listing rules;

(g) have sufficient financial, human and system resources to —

(i) operate a fair, orderly and transparent market;

(ii) meet contingencies or disasters; and

(iii) provide adequate security arrangements; and

(h) ensure that it appoints or employs fit and proper persons as its chief executive officer, directors and key management officers.

(2) For the purposes of subsection (1) (g), “contingencies or disasters” includes technical complications occurring within automated systems.

Obligation to notify Authority of certain matters

19.-(1) An approved exchange shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of such occurrence:

- (a) any material change to the information provided by the approved exchange in its application under section 7 (1) or 10 (1);
- (b) the approved exchange becoming aware of any matter which may reasonably indicate that it has breached, or that it may not be able to satisfy or comply with, a condition, restriction, obligation or requirement under this Act or as may be prescribed by the Authority;
- (c) the carrying on of a business by the approved exchange other than -
 - (i) operating a market;
 - (ii) a business incidental to operating a market; or
 - (iii) such business or class of business as the Authority may prescribe;
- (d) the acquisition by the approved exchange of a substantial shareholding in a corporation which does not carry on -
 - (i) the business of operating a market;
 - (ii) a business incidental to operating a market; or
 - (iii) such business or class of business as the Authority may prescribe;
- (e) the approved exchange becoming aware of a financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations, or may affect the ability of a member to meet its financial obligations to the approved exchange;
- (f) where an approved exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the approved exchange; and
- (g) any other matter that the Authority may specify by regulation or notice in writing to the approved exchange.

(2) Without prejudice to the generality of section 49 (1), the Authority may, at any time after receiving the notification specified under subsection (1), issue directions to the approved exchange –

- (a) in the case of the matter specified in subsection (1) (b), for the purpose of securing compliance with the condition, restriction, obligation or requirement;
- (b) in the case of the matter specified in subsection (1) (c) -
 - (i) to cease carrying on the business referred to in subsection (1) (c); or
 - (ii) to carry on the business referred to in subsection (1) (c) on such conditions or restrictions as the Authority may impose if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 49(1); or
- (c) in the case of the matter specified in subsection (1) (d) -
 - (i) to dispose of the shareholding referred to in subsection (1) (d); or
 - (ii) to exercise its rights relating to such shareholding on such conditions or restrictions as the Authority may impose if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 49(1),

and the approved exchange shall comply with such directions.

Obligation to maintain proper records

20.- An approved exchange shall maintain a record of all transactions effected through its facilities in such form and manner as the Authority may prescribe, including –

- (a) the type of information to be recorded;
- (b) the extent to which the record includes details of each transaction; and
- (c) the period of time that such record is to be maintained.

Obligation to submit periodic reports

21. An approved exchange shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

Obligation to assist Authority

22. An approved exchange shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of such books and other information –

- (a) relating to the business of the approved exchange; or

- (b) in respect of such dealings in securities or trading in futures contracts,

or any other specified information as the Authority may require for the proper administration of this Act.

Obligation to maintain confidentiality

23.-(1) Subject to subsection (2), an approved exchange, and any of its officers or employees shall maintain, and aid in maintaining, confidentiality of any of its user information.

- (2) Subsection (1) shall not apply to –
 - (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
 - (b) the disclosure of user information which is authorised by the Authority to be disclosed or furnished; or
 - (c) the disclosure of user information pursuant to a requirement imposed by the Government or any statutory body or any requirement imposed under any written law.

(3) For the avoidance of doubt, nothing in this section shall be construed to prevent an approved exchange from entering into an express agreement with a user which obliges the approved exchange to maintain a higher degree of confidentiality than that specified in this section.

Penalties under this Subdivision

25. An approved exchange which contravenes section 18(1), 19(1) or (2), 20, 21, 22 or 23(1) in this Subdivision shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Subdivision 2: Rules of Approved Exchanges

Business rules and listing rules of approved exchanges

26.-(1) Without limiting the generality of sections 18 and 48, the Authority may prescribe the matters that an approved exchange shall make provision for in the business rules or listing rules of the approved exchange, and the approved exchange shall make provision for these matters in its business rules or listing rules, as the case may be.

(2) An approved exchange shall not make any amendment to its business rules or listing rules unless it complies with such requirements as the Authority may prescribe.

(3) For the purposes of this Subdivision, an amendment to a business rule or listing rule means any change to the scope, requirement, obligation or restriction under the business rule or listing rule, as the case may be, whether the change is made by an alteration to the text of the rule or by any other notice issued by or on behalf of the approved exchange.

(4) An approved exchange which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Business rules of approved exchanges have effect as contract

27. The business rules of an approved exchange shall operate as a binding contract —

- (a) between the approved exchange and each member; and
- (b) between a member and every other member,

under which each of the persons mentioned in paragraphs (a) and (b) agrees to observe and perform the provisions of the business rules as are in force for the time being, so far as those provisions are applicable to that person.

Power of court to order observance or enforcement of business rules or listing rules

28.-(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules or listing rules of an approved exchange fails to do so, the High Court may, on the application of the Authority, an approved exchange or a person aggrieved by the failure, after giving to the person against whom the order is sought an opportunity to be heard, make an order directing that person to comply with, observe, enforce or give effect to those business rules or listing rules.

- (2) Subsection (1) shall apply to a person being —
 - (a) a corporation that has been admitted to the official list of an approved exchange and has not been removed from that official list;
 - (b) a person associated with a corporation that has been admitted to the official list of an approved exchange and has not been removed from that official list, to the extent to which the business rules or listing rules purport to apply to him; or
 - (c) an approved exchange.

(3) This section is in addition to and not in derogation of any other remedies available to the aggrieved person referred to in subsection (1).

Non-compliance with business rules or listing rules not to substantially affect rights of person

29. Any failure by an approved exchange to comply with this Act or its business rules or, where appropriate, its listing rules in relation to a matter shall not prevent the matter from being treated for the purposes of this Act as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the business rules or listing rules.

Subdivision 3: Matters Requiring the Authority's Approval

Control of substantial shareholding in approved exchanges

31.-(1) No person shall enter into any agreement to acquire shares by virtue of which he would, if the agreement had been carried out, acquire a substantial shareholding in an approved exchange without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to enter 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 (7), 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 approved exchange in which the substantial shareholder has or has had an interest.

(4) Until the person to whom a direction is issued under subsection (3) transfers or disposes of the shares which are the subject of the direction and, notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association of the approved exchange —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the approved exchange shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the approved exchange, the approved exchange shall not make any payment (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(5) Any issue of shares by the approved exchange in contravention of subsection (4) (b) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return those

shares to the approved exchange, upon which the approved exchange shall return to the person any payment received from him in respect of those shares.

(6) Any payment made by the approved exchange in contravention of subsection (4) (c) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return the payment he has received to the approved exchange.

(7) Any person who contravenes subsection (1) 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 \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(8) Any person who contravenes subsection (4) (b) or (c), (5) or (6) or any direction issued by the Authority under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Approval of chief executive officer, director and key management officer

32.-(1) No approved exchange shall appoint a person as its chief executive officer or director unless the approved exchange has obtained the approval of the Authority.

(2) The Authority may, by notice in writing, require an approved exchange to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved exchange and the approved exchange shall comply with the notice.

(3) An application for approval under subsection (1) or (2) shall be made in such form and manner as the Authority may prescribe.

(4) Without prejudice to the generality of section 48 and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by noticed in writing.

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the approved exchange an opportunity to be heard.

(6) The Authority may refuse an application for approval on any of the following grounds without giving the approved exchange 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 had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) An approved exchange shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chief executive officer, director or persons referred to in the notice issued by the Authority under subsection (2).

(9) In this section, “committee” includes any committee of directors, disciplinary committee, appeals committee, or any other body responsible for disciplinary action against a member of the approved exchange.

(10) An approved exchange which contravenes subsection (1), (2) or (8) shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to approve securities and futures contracts

33.-(1) No approved exchange shall list, de-list or permit the trading of any –

- (a) futures contract;
- (b) right, option or derivative in respect of any debentures, stocks or shares;
- (c) right under a contract for differences or under any other contract the purpose or purported purpose of which is to secure a profit or avoid a loss by reference to fluctuations in –
 - (i) the value or price of any debentures, stocks or shares;
 - (ii) the value or price of any group of debentures, stock or shares; or
 - (iii) an index of any debentures, stocks or shares, and
- (d) other instrument, contract or transaction, or any class of instrument, contract or transaction as the Authority may by regulations prescribe,

on the market operated by the approved exchange without the approval of the Authority.

(2) The Authority may grant approval for any instrument, contract or transaction, or any class thereof, under subsection (1), subject to such conditions or restrictions as the Authority may determine by notice in writing to the approved exchange.

(3) An approved exchange which contravenes subsection (1) or any of the conditions or restrictions imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Listing of approved exchanges on securities market

34.(1) The securities of an approved exchange may be listed for quotation on a securities market that is operated by such approved exchange or any of its related corporations if such approved exchange and the operator of the securities market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of trading of the securities of the approved exchange,

and the approved exchange and operator of the securities market shall comply with such requirements.

(2) Where the securities of an approved exchange are listed for quotation on a securities market operated by such approved exchange or any of its related corporations, the listing rules of the securities market shall be deemed to allow the Authority, instead of the operator of the securities market, to make decisions and to take action, to require the operator of the securities market to make decisions and to take action on the Authority's behalf, on —

- (a) the admission to or removal of the approved exchange from the official list of the securities market; and
- (b) granting, stopping or suspending the securities of the approved exchange from being listed for quotation or quoted on the securities market.

(3) The Authority may, by notice in writing to the operator of the securities market —

- (a) modify the listing rules of the securities market for the purpose of their application to the listing for quotation or trading of the securities of the approved exchange; and
- (b) waive the application of any listing rule of the securities market to the approved exchange.

(4) An approved exchange which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Subdivision 4: Powers of the Authority

Fixing of position and trading limits in futures contracts

35. —(1) For the purpose of diminishing, eliminating or preventing excessive speculation in any commodity under a futures contract, the Authority or an approved exchange with the approval of the Authority may, by notice in writing from time to time, establish and fix such limits as it considers necessary on the amount of trading which may be done or positions which may be held by any person, generally or specifically, under a futures contract traded on the futures market of or subject to the business rules of an approved exchange.

(2) In determining whether a person has exceeded such limits, the positions held and trading done by any person, directly or indirectly, controlled by such a person shall be included with the positions held and trading done by that person.

(3) Such limits upon positions and trading shall apply to positions held by, and trading done by, 2 or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.

(4) This section shall not apply to positions as defined by an approved exchange in accordance with such regulations as may be prescribed.

(5) No person shall, directly or indirectly —

(a) buy or sell or agree to buy or sell, under a futures contract traded on the futures market of or subject to the business rules of an approved exchange, any amount of a commodity in excess of the trading limits fixed for one business day, or any other stated period set by the Authority or an approved exchange; or

(b) hold or control a net buy or sell position under a futures contract traded on the futures market of or subject to the business rules of an approved exchange in excess of any position limit fixed by the Authority or the approved exchange.

(6) Nothing in this section shall preclude the Authority or an approved exchange with the approval of the Authority from —

(a) fixing different trading or position limits for different futures contracts, different delivery months, or for different days remaining until the last day of trading in a futures contract;

- (b) fixing different trading limits for the purposes of subsection (5);
or
- (c) exempting transactions under this section.

Power of Authority in securities market

36. —(1) Without prejudice to the generality of section 49, where the Authority is of the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a corporation on the securities market of an approved exchange –

- (a) in order to protect persons buying or selling the securities; or
- (b) in the interests of the public,

the Authority may give notice in writing to the approved exchange stating that it is of that opinion and setting out the reasons for its opinion.

(2) If, after the receipt of the notice given under subsection (1), the approved exchange fails to take any action in relation to those securities on that securities market and the Authority continues to be of the opinion that it is necessary to prohibit trading in those securities on that securities market, the Authority may, by notice in writing to the approved exchange, prohibit trading in those securities on that securities market for such period, not exceeding 14 days, as is specified in the notice.

(3) Where the Authority gives a notice to an approved exchange under subsection (2) in relation to trading in particular securities of, or made available by, a corporation or other entity, the Authority shall —

- (a) at the same time send a copy of the notice to the corporation or other entity together with a statement setting out the reasons for the giving of the notice; and
- (b) as soon as practicable furnish to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the approved exchange.

(4) Any person who is aggrieved by any action taken by the Authority or an approved exchange under this section may, within 30 days after it is notified of the action, appeal to the Minister whose decision shall be final.

(5) Notwithstanding the lodging of an appeal under subsection (4), any action taken by the Authority or an approved exchange under this section shall continue to have effect pending the decision of the Minister or withdrawal of the appeal.

(6) An approved exchange which permits trading in securities on the securities market of the approved exchange in contravention of a notice given under subsection (2) 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.

Additional powers of Authority in respect of auditors

36A. —(1) If an auditor of an approved exchange, in the course of the performance of his duties becomes aware —

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved exchange to a material extent;
- (b) of any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or a criminal offence involving fraud or dishonesty; or
- (c) of any irregularity that has or may have a material effect upon the accounts of the approved exchange, including irregularities that affect or jeopardise or may affect or jeopardise the funds or property of investors in securities or futures contracts,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor has, apart from this section, as a defendant in an action for defamation.

(4) The Authority may impose all or any of the following duties on an auditor of an approved exchange:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved exchange;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or carrying out of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(5) The approved exchange shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

Emergency powers of Authority

37. —(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interest of the public or a section of the public or for the protection of investors, the Authority may direct by notice in writing an approved exchange to take such action as it considers necessary to —

- (a) maintain or restore orderly trading in securities or futures contracts or any class of securities or futures contracts; or
- (b) liquidate any position in respect of any securities or futures contract or any class of securities or futures contracts,

and the approved exchange shall comply with that direction.

(2) Without prejudice to subsection (1), the action which the Authority may direct an approved exchange to take includes—

- (a) terminating or suspending trading on the approved exchange;
- (b) confining trading to liquidation of securities or futures contracts positions;
- (c) ordering the liquidation of all positions or part thereof or the reduction in such positions;
- (d) limiting trading to a specific price range;
- (e) modifying trading days or hours;
- (f) altering conditions of delivery;
- (g) fixing the settlement price at which positions are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in securities or futures contracts or any class of securities or futures contracts;
- (i) requiring margins or additional margins for any securities or futures contracts; and
- (j) modifying or suspending any of the business rules of the approved exchange.

(3) Where the approved exchange fails to comply with the direction of the Authority under subsection (1), within such time as is specified by the Authority, the Authority may —

- (a) set emergency margin levels in any securities or futures contract or class of securities or futures contracts;
- (b) set limits that may apply to market positions acquired in good faith prior to the date of the notice issued by the Authority; or
- (c) take such other action as the Authority thinks fit to maintain or restore orderly trading in any securities or futures contracts or class of securities or futures contracts, or liquidation of any

position in respect of any securities or futures contract or class of securities or futures contracts.

(4) In this section, “emergency” means threatened or actual market manipulations and corners, and includes —

- (a) any act of any government affecting a commodity or securities;
- (b) any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity or securities; or
- (c) any other undesirable situations or practices which in the opinion of the Authority constitutes an emergency.

(5) The Authority may modify any action taken by an approved exchange under subsection (1), including the setting aside of that action.

(6) Any person who is aggrieved by any action taken by the Authority or an approved exchange under this section may, within 30 days after it is notified of the action, appeal to the Minister whose decision shall be final.

(7) Notwithstanding the lodging of an appeal under subsection (5), any action taken by the Authority or an approved exchange under this section shall continue to have effect pending the decision of the Minister or withdrawal of the appeal.

(8) The Minister may make such modification to any action, taken by the Authority or an approved exchange, that is the subject of an appeal and such modified action shall have effect.

(9) An approved exchange which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to exempt approved exchanges from obligations

38. The Authority may exempt an approved exchange or a class of approved exchanges from any obligations in this Part, if it is satisfied that the non-compliance by such approved exchange or exchanges with such obligations would not detract from the objectives specified in section 5.

Subdivision 5: Immunity

Immunity from criminal or civil liability

39. No criminal or civil liability shall be incurred by —

- (a) an approved exchange;

- (b) any person acting on behalf of an approved exchange, including —
 - (i) any director of the approved exchange; or
 - (ii) any member of any committee established by the approved exchange,

for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with the discharge or purported discharge of its obligations under this Act or the business rules or, where appropriate, listing rules of the approved exchange.

Division 3 – Regulation of Recognised Market Operators

General obligations

40. -(1) A recognised market operator shall -

- (a) as far as is reasonably practicable, operate a fair, orderly and transparent market;
- (b) manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public; and
- (d) have sufficient financial, human and system resources to —
 - (i) establish and operate a fair, orderly and transparent market;
 - (ii) meet contingencies or disasters; and
 - (iii) provide adequate security arrangements.

(2) For the purposes of subsection (1) (d), “contingencies or disasters” includes technical complications occurring within automated systems.

Obligation to notify Authority of certain matters

41. A recognised market operator shall, as soon as practicable after the occurrence of any of the following matters, notify the Authority of such occurrence:

- (a) any material change to the information provided by the recognised market operator in its application under section 7 (1) or 10 (1);
- (b) any change of the directors and chief executive officer of the recognised market operator;

- (c) the recognised market operator becoming aware of any matter which may reasonably indicate that it has breached, or that it may not be able to satisfy or comply with, a condition, restriction, obligation or requirement under this Act or as may be prescribed by the Authority;
- (d) the recognised market operator becoming aware of a financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations, or may affect the ability of a participant to meet its financial obligations to the recognised market operator; and
- (e) any other matter that the Authority may impose by regulations or notice in writing to the recognised market operator.

Obligation to maintain proper records

42.- A recognised market operator shall maintain a record of all transactions effected through its facilities in such form, manner and frequency as the Authority may prescribe, including –

- (a) the type of information to be recorded;
- (b) the extent to which the record includes details of each transaction; and
- (c) the period of time that such record is to be maintained.

Obligation to assist Authority

43. A recognised market operator shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of such books and other information –

- (a) relating to the business of the recognised market operator; or
- (b) in respect of such dealings in securities or trading in futures contracts,

or any other specified information as the Authority may require for the proper administration of this Act.

Power of Authority to approve securities and futures contracts

44. - (1) No recognised market operator shall, without the approval of the Authority, list, de-list or permit the trading of any –

- (a) futures contract;
- (b) right, option or derivative in respect of any debentures, stock or shares;

- (c) right under a contract for differences or under any other contract the purpose or purported purpose of which is to secure a profit or avoid a loss by reference to fluctuations in –
 - (i) the value or price of any debentures, stock or shares;
 - (ii) the value or price of any group of debentures, stock or shares; or
 - (iii) an index of any debentures, stock or shares, and
- (d) other instrument, contract or transaction, or any class of instrument, contract or transaction as the Authority may by regulation prescribe,

on a market operated by the recognised market operator.

(2) The Authority may grant approval for any instrument, contract or transaction or class thereof under subsection (1), subject to such conditions or restrictions as the Authority may think fit by notice in writing to the recognised market operator.

(3) The recognised market operator shall comply with the conditions and restrictions imposed under subsection (2).

Penalties under this Division

47. A recognised market operator which contravenes section 40(1), 41, 42, 43 or 44(1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Division 4: General Powers of the Authority

Power of Authority to make regulations

48.(1) Without prejudice to section 341, the Authority may make regulations relating to the exemption, recognition or approval of, and the requirements applicable to, persons who establish, operate or assist in establishing or operating markets.

- (2) Regulations made under this section may provide –
 - (a) that a contravention of any specified provision thereof shall be an offence; and
 - (b) for penalties not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that

offence for every day or part thereof during which the offence continues after conviction.

Power of Authority to issue directions

49.(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring fair, orderly and transparent markets;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interest of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction as may be imposed by the Authority under section 8 (2), 13 (2), 13 (4), 19 (2) (b), 19 (2) (c), 31(2), 33(2) or 44(2), or such other obligations or requirements under this Act,

issue directions by notice in writing either of a general or specific nature to an approved exchange, a recognised market operator or an exempt market operator, and the approved exchange, recognised market operator or exempt market operator shall comply with such directions.

(2) An approved exchange, a recognised market operator or an exempt market operator which, without reasonable excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(3) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

Power of Authority to remove officers

50.(1) Where the Authority is satisfied that an officer of an approved exchange or a recognised market operator —

- (a) has wilfully contravened or wilfully caused that approved exchange or recognised market operator to contravene this Act or its business rules or listing rules, where applicable;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act or its business rules or listing rules, where applicable, by that approved exchange or recognised market operator or a member of that approved exchange or recognised market operator, or a person associated with that member;

- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public, or section of the public or for the protection of investors, direct by notice in writing that approved exchange or recognised market operator to remove the officer from office or employment and that approved exchange or recognised market operator shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of an approved exchange or a recognised market operator has failed to discharge the duties or functions of his office for the purposes of subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct an approved exchange or a recognised market operator to remove an officer from office or employment without giving the approved exchange or recognised market operator an opportunity to be heard.

(4) The Authority may direct an approved exchange or a recognised market operator to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the approved exchange or recognised market operator 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 had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs an approved exchange or a recognised market operator to remove the officer from office or employment under

subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) An approved exchange or a recognised market operator that is aggrieved by a direction of the Authority under subsection (4) may, within 30 days after it is notified of the direction, appeal to the Minister whose decision shall be final.

(7) Subject to subsection (8), no criminal or civil liability shall be incurred by an approved exchange or a recognised market operator in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(8) An approved exchange or a recognised market operator which, without reasonable justification or excuse, contravenes a written notice issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Amendment of Part III of the principal Act

5. The principal Act is amended by deleting Part III and substituting the following Parts therefor:

“Part III

Clearing Facilities

Objectives of this Part

51. The objectives of this Part are to –
- (a) reduce systemic risk; and
 - (b) promote the safety and efficiency of clearing facilities that support systemically-important markets or form an integral part of the financial infrastructure.

Division 1 – Establishment of Clearing Facilities

Requirement to notify

53.-(1) Subject to subsection (2), no person shall establish or operate a clearing facility unless that person has notified the Authority of its intent to establish or operate a clearing facility at least 60 business days prior to the establishment, or commencement of operation, of the clearing facility.

(2) A person may apply to the Authority to reduce the period referred to in subsection (1) and the Authority may, at its discretion, substitute such other period as may be determined by the Authority, in place of the period in subsection (1) for that person.

(3) The notice referred to in subsection (1) shall provide information in such form and manner as may be prescribed by the Authority.

(4) The application referred to in subsection (2) shall provide information in such form and manner as may be prescribed by the Authority.

(5) The Authority may require a person providing the notice referred to in subsection (1) to furnish it with such information or documents as the Authority considers necessary in relation to the notice.

(6) For the purposes of subsection (1), “business day” has the same meaning as in section 4(1) of the Companies Act (Cap. 50).

(7) Any person who contravenes subsection (1) 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 3 years or to both 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.

(8) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Provision of information to Authority

54.-(1) A person operating a clearing facility shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Notification of change of particulars

55.-(1) A person operating a clearing facility shall, no later than 14 days after the occurrence of any of the following circumstances, notify the Authority of such occurrence:

- (a) a change of its chief executive officer;
- (b) a change of the address of the principal place of business at which it carries on the business of operating a clearing facility;
- (c) a material change in the business of the clearing facility;
- (d) an intent to cease operations of the clearing facility; and
- (e) any other matter as the Authority may prescribe.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Exemption

56. Sections 53, 54 and 55 shall not apply to such persons or class of persons as may be prescribed by the Authority.

Power to order cessation or stop commencement

57.- (1) The Authority may, within the period of notification specified in section 53(1), by notice in writing order a person who has given notice under section 53(1) not to establish or commence operation of a clearing facility if the Authority is of the opinion that it is in the interest of the public to do so.

(2) The Authority may, by notice in writing, order a person to cease operating its clearing facility if the person –

- (a) has contravened any provision of this Act or any other written law in the course of operating its clearing facility;
- (b) in the opinion of the Authority, is operating the clearing facility in a manner that is likely to pose systemic risk to the financial system of Singapore; or
- (c) it is in the interest of the public to do so.

(3) Subject to subsection (4), the Authority shall not make an order under subsection (1) or (2) without giving the person an opportunity to be heard.

(4) The Authority may order a person not to establish or commence operation of a clearing facility under subsection (1) or to cease operating its clearing facility under subsection (2) on the ground that it is in the interest of the public to do so without giving the person an opportunity to be heard, if the order is given on any of the following grounds:

- (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 an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person; or
- (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 had acted fraudulently or dishonestly.

(5) A person to whom an order has been made under subsection (1) or (2) that is aggrieved by that order of the Authority may, within 30 days after it

received the notice referred to in subsection (2), appeal to the Minister whose decision shall be final.

(6) Notwithstanding the lodging of an appeal under subsection (5), any action taken by the Authority under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(7) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

(8) Any order made under subsection (2) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of a clearing facility operated by the person, whether the agreement, transaction or arrangement was entered into before or after the order of the cessation; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

(9) The Authority shall give notice in the *Gazette* of any order of cessation made under subsection (2).

(10) A person who contravenes an order made under subsection (1) or (2) 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 3 years or to both 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.

Division 2 – Designation of Persons Operating Clearing Facilities

Designation of persons operating clearing facilities

58.-(1) The Authority may designate a person operating a clearing facility as a designated clearing house for the purposes of this Act, if it is satisfied that —

- (a) a disruption in the operations of the clearing facility could trigger, cause or transmit further systemic disruptions to capital markets or the financial system of Singapore;
- (b) a disruption in the operations of the clearing facility could affect public confidence in capital markets, financial institutions or the financial system of Singapore; or
- (c) it is in the interest of the public to do so.

(2) The Authority shall give notice in the *Gazette* of any person designated under subsection (1).

(3) A designation by the Authority under subsection (1) shall continue in effect until it is withdrawn.

(4) A person operating a clearing facility that is aggrieved by the decision of the Authority to designate it as a designated clearing house under subsection (1) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

Prohibition on holding out

59.-(1) No person shall hold himself out as a designated clearing house unless he is designated by the Authority under section 58(1).

(2) Any person who contravenes subsection (1) 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 3 years or both 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.

General criteria to be taken into account by Authority

60. Without affecting the generality of section 58, the Authority may have regard to the following matters in determining whether it is satisfied of the considerations in subsection 58(1):

- (a) the size and structure, or proposed size and structure, of the clearing facility;
- (b) the nature of the services provided, or to be provided by the clearing facility;
- (c) the nature of the securities or futures contracts cleared, or to be cleared, by the clearing facility;
- (d) the market where the securities or futures contracts cleared through the clearing facility are traded or to be traded;
- (e) the nature of the investors or participants, or proposed investors or participants, who may use or have an interest in the clearing facility;
- (f) whether the person operating the clearing facility is otherwise regulated by the Authority under this Act or any other written law;
- (g) whether the clearing facility takes on counterparty risks, through novation or otherwise, in the clearing or settlement of transactions;
- (h) the parties who may be affected in the event that the clearing facility runs into difficulties;
- (i) the interest of the public; and
- (j) any other circumstances that the Authority may deem relevant.

Withdrawal of designation

61.-(1) The Authority may, at any time, on its own initiative or on application of the designated clearing house, withdraw the designation of any designated clearing house if the Authority is of the view that the considerations in section 58(1) are no longer valid or satisfied.

(2) The Authority shall give notice in the *Gazette* of any withdrawal under subsection (1).

(3) The Authority shall not withdraw the designation on its own initiative of any designated clearing house without giving the person operating the clearing facility an opportunity to be heard.

Division 3 – Regulation of Designated Clearing Houses

Subdivision 1 – Obligations of Designated Clearing Houses

General obligations

62.-(1) A designated clearing house shall -

- (a) as far as is reasonably practicable, operate a safe and efficient clearing facility;
- (b) manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) ensure that access for participation in its clearing facility is subject to criteria that are fair and objective, and designed to ensure the safe and efficient functioning of its facility and protect the interests of the investing public;
- (e) maintain business rules that make satisfactory provision for —
 - (i) the clearing facility to be operated in a safe and efficient manner; and
 - (ii) the proper regulation and supervision of its members;
- (f) enforce compliance by its members with its business rules;
- (g) have sufficient financial, human and system resources to -
 - (i) operate a safe and efficient clearing facility;
 - (ii) meet contingencies or disasters; and
 - (iii) provide adequate security arrangements; and

- (h) ensure that it appoints or employs fit and proper persons as its chief executive officer, directors and key management officers.
- (2) The obligations imposed on the designated clearing house under this Act shall apply to all clearing facilities operated by the designated clearing house.
- (3) Notwithstanding subsection (2), the Authority may by notice in writing exempt any clearing facility operated by a designated clearing house from all or specific sections of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 51.
- (4) For the purposes of subsection (1), “contingencies or disasters” includes technical complications occurring within automated systems.

Obligation to notify Authority of certain matters

63.-(1) A designated clearing house shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of such occurrence:

- (a) the designated clearing house becoming aware of any matter which may reasonably indicate that it has breached, or that it may not be able to satisfy or comply with, a condition, restriction, obligation or requirement under this Act or as may be prescribed by the Authority;
- (b) the carrying on of a business by the designated clearing house other than -
 - (i) operating a clearing facility;
 - (ii) a business incidental to operating a clearing facility; or
 - (iii) such business or class of business as the Authority may prescribe;
- (c) the acquisition by the designated clearing house of a substantial shareholding in a corporation which does not carry on -
 - (i) the business of operating a clearing facility;
 - (ii) a business incidental to operating a clearing facility; or
 - (iii) such business or class of business as the Authority may prescribe;
- (d) the designated clearing house becoming aware of a financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations, or may affect the ability of a member to meet its financial obligations to the designated clearing house;

- (e) where a designated clearing house reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the designated clearing house; and
 - (f) any other matter that the Authority may specify by regulation or notice in writing to the designated clearing house.
- (2) Without prejudice to the generality of section 80A (1), the Authority may, at any time after receiving the notification referred to under subsection (1), issue directions to the designated clearing house -
- (a) in the case of the matter specified in subsection (1) (a), for the purpose of securing compliance with the condition, restriction, obligation or requirement;
 - (b) in the case of the matter specified in subsection (1) (b) –
 - (i) to cease carrying on the business referred to in subsection (1) (b); or
 - (ii) to carry on the business referred to in subsection (1) (b) on such conditions or restrictions as the Authority may impose if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 80A(1); or
 - (c) in the case of the matter specified in subsection (1) (c) –
 - (i) to dispose of the shareholding referred to in subsection (1) (c);
 - (ii) to exercise its rights relating to such shareholding on such conditions or restrictions as the Authority may impose if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 80A(1),
- and the designated clearing house shall comply with such directions.

Obligation to manage risks prudently

64.-(1) Without prejudice to the generality of section 62 (1) (b), a designated clearing house shall ensure that the systems and controls concerning the assessment and management of risks to its clearing facility are adequate and appropriate for the scale and nature of its operations.

- (2) Without prejudice to the generality of section 80, the Authority may make regulations relating to the matters in subsection (1), including the -
- (a) treatment of money and assets held by the designated clearing house;
 - (b) limits in respect of positions held with the designated clearing house; and

- (c) measures to manage any risks assumed by the designated clearing house.

Obligation to maintain proper records

65.- A designated clearing house shall maintain a record of all transactions effected through its clearing facility in such form and manner as the Authority may prescribe, including –

- (a) the type of information to be recorded;
- (b) the extent to which the record includes details of each transaction; and
- (c) the period of time that such record is to be maintained.

Obligation to submit periodic reports

66. A designated clearing house shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

Obligation to assist Authority

67. A designated clearing house shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of such books and other information –

- (a) relating to the business of the designated clearing house; or
- (b) in respect of any transaction or class of transactions cleared or settled by the designated clearing house,

or any other specified information as the Authority may require for the proper administration of this Act.

Obligation to maintain confidentiality

68.-(1) Subject to subsection (2), a designated clearing house and any of its officers or employees shall maintain, and aid in maintaining, confidentiality of any of its user information.

- (2) Subsection (1) shall not apply to –
 - (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
 - (b) the disclosure of user information which is authorised by the Authority to be disclosed or furnished; or

- (c) the disclosure of user information pursuant to a requirement imposed by the Government or any statutory body or any requirement imposed under any written law.

(3) For the avoidance of doubt, nothing in this section shall be construed to prevent a designated clearing house from entering into an express agreement with a user which obliges the designated clearing house to maintain a higher degree of confidentiality than that specified in this section.

Annual fees

69.-(1) Every designated clearing house shall pay to the Authority such annual fees as may be prescribed.

(2) The annual fees shall be paid in such manner as may be specified by the Authority.

(3) The Authority may exempt, wholly or in part, any designated clearing house from the payment of the annual fees prescribed under this section.

(4) The Authority may, where it considers appropriate, refund the whole or part of any annual fee paid to it.

Penalties under this Subdivision

70. A designated clearing house which contravenes section 62(1), 63(1) or (2), 64(1), 65, 66, 67 or 68(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Subdivision 2: Rules of Designated Clearing Houses

Business rules of designated clearing houses

71.(1) Without limiting the generality of sections 62 and 80, the Authority may prescribe the matters that a designated clearing house shall make provision for in the business rules of the designated clearing house, and the designated clearing house shall make provision for these matters in its business rules.

(2) A designated clearing house shall not make any amendment to its business rules unless it complies with such requirements as the Authority may prescribe.

(3) For the purposes of this Subdivision, an amendment to a business rule means any change to the scope, requirement, obligation or restriction under the business rule, whether the change is made by an alteration to the text of the rule or by any other notice issued by or on behalf of the designated clearing house.

(4) A designated clearing house which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Business rules of designated clearing houses have effect as contract

72.-(1) The business rules of a designated clearing house shall operate as a binding contract-

- (a) between the designated clearing house and each issuer of a security;
- (b) between the designated clearing house and each participant;
- (c) between each issuer and each participant; and
- (d) between a participant and every other participant,

under which each of the persons mentioned in paragraphs (a) to (d) agrees to observe and perform the provisions of the business rules as are in force for the time being, so far as those provisions are applicable to that person.

(2) For the purposes of this section, “issuer”, in relation to a security, means a person who issued or made available, or proposes to issue or make available, the security that is cleared or settled by the designated clearing house.

Power of court to order observance or enforcement of business rules

73.-(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a designated clearing house, fails to do so, the High Court may, on the application of the Authority, a designated clearing house or a person aggrieved by the failure, after giving to the person against whom the order is sought an opportunity to be heard, make an order directing that person to comply with, observe or enforce, or give effect to, those business rules.

(2) For the purposes of this section, “person” includes a designated clearing house.

(3) This section is in addition to and not in derogation of any other remedies available to the aggrieved person referred to in subsection (1).

Non-compliance with business rules not to substantially affect rights of person

74. Any failure by a designated clearing house to comply with this Act or its business rules in relation to a matter shall not prevent the matter from being treated for the purposes of this Act as done in accordance with the business rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the business rules.

Subdivision 3: Matters Requiring the Authority's Approval

Control of substantial shareholding in designated clearing houses

76.(1) No person shall enter into any agreement to acquire shares by virtue of which he would, if the agreement had been carried out, acquire a substantial shareholding in a designated clearing house without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to enter 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 (7), 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 designated clearing house in which the substantial shareholder has or has had an interest.

(4) Until the person to whom a direction is issued under subsection (3) transfers or disposes of the shares which are the subject of the direction and, notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association of the designated clearing house —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the designated clearing house shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the designated clearing house, the designated clearing house shall not make any payment (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(5) Any issue of shares by the designated clearing house in contravention of subsection (4) (b) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return those shares to the designated clearing house, upon which the designated clearing house shall return to the person any payment received from him in respect of those shares.

(6) Any payment made by the designated clearing house in contravention of subsection (4) (c) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return the payment he has received to the designated clearing house.

(7) Any person who contravenes subsection (1) 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 \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(8) Any person who contravenes subsection (4) (b) or (c), (5) or (6) or any direction issued by the Authority under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Approval of chief executive officer, director and key management officer

77.-(1) No designated clearing house shall appoint a person as its chief executive officer or director unless the designated clearing house has obtained the approval of the Authority.

(2) The Authority may, by notice in writing, require a designated clearing house to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the designated clearing house and the designated clearing house shall comply with the notice.

(3) An application for approval under subsection (1) or (2) shall be made in such form and manner as the Authority may prescribe.

(4) Without prejudice to the generality of section 80 and any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the designated clearing house an opportunity to be heard.

(6) The Authority may refuse an application for approval on any of the following grounds without giving the designated clearing house an opportunity to be heard:

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

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(8) A designated clearing house shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chief executive officer, director or persons referred to in the notice issued by the Authority under subsection (2).

(9) In this section, “committee” shall include any committee of directors, disciplinary committee, appeals committee, or any other body responsible for disciplinary action against a member of the designated clearing house.

(10) A designated clearing house which contravenes subsection (1), (2) or (8) shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Listing of designated clearing house on securities market

78.(1) The securities of a designated clearing house may be listed for quotation on a securities market that is operated by any of its related corporations, if the designated clearing house and the operator of the securities market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of trading of the securities of the designated clearing house,

and the designated clearing house and operator of the securities market shall comply with such requirements.

(2) Where the securities of a designated clearing house are listed for quotation on a securities market operated by any of its related corporations, the listing rules of the securities market shall be deemed to allow the Authority, instead of the operator of the related corporation to make decisions and to take action (or require the operator of the securities market to make decisions and to take action on the Authority’s behalf) on —

- (a) the admission to or removal of the designated clearing house from the official list of the securities market; and

- (b) granting, stopping or suspending the securities of the designated clearing house from being listed for quotation or quoted on the securities market.
- (3) The Authority may, by notice in writing to the operator of the securities market —
 - (a) modify the listing rules of the securities market for the purpose of their application to the listing for quotation or trading of the securities of the designated clearing house; and
 - (b) waive the application of any listing rule of the securities market to the designated clearing house.
- (4) An designated clearing house which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Subdivision 4: Powers of the Authority

Power to impose conditions or restrictions

78A.-(1) The Authority may impose on a designated clearing house other conditions or restrictions as it thinks fit, in addition to the obligations imposed on it under this Division, for the purposes of furthering the objectives of this Part.

(2) The Authority may, at any time, by notice in writing to the designated clearing house, vary any condition or restriction as it may think fit.

(3) Without affecting the generality of subsection (1) or (2), the conditions or restrictions that the Authority may impose include -

- (a) the activities that the designated clearing house may undertake;
- (b) the products that may be cleared by the clearing facility;
- (c) the nature of investors or participants who may use or participate in the clearing facility; and
- (d) the requirement for the designated clearing house to operate as a corporation.

(4) A designated clearing house which contravenes any condition or restriction imposed under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Power to order cessation of designated clearing houses

78B.-(1) The Authority may, by notice in writing to a designated clearing house, order a designated clearing house to cease operating any of its clearing facilities if the designated clearing house –

- (a) fails to comply with any obligation imposed on it under section 62(1);
- (b) contravenes any condition, restriction or direction imposed or issued to him by the Authority under this Act or any other provision in this Act;
- (c) has provided false or misleading information in a material particular to the Authority; or
- (d) is operating in a manner that is, in the opinion of the Authority, contrary to the interests of the public.

(1A) The Authority shall give notice in the *Gazette* of any order made under subsection (1).

(2) Subject to subsection (3), the Authority shall not order a designated clearing house to cease operations of the clearing facility under subsection (1) without giving the designated clearing house an opportunity to be heard.

(3) The Authority may order a designated clearing house to cease operations of its clearing facility under subsection (1) on any of the following grounds without giving the designated clearing house an opportunity to be heard:

- (a) the designated clearing house 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 designated clearing house; or
- (c) the designated clearing house 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 had acted fraudulently or dishonestly.

(4) A designated clearing house that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(5) Notwithstanding the lodging of an appeal under subsection (4), any action taken by the Authority under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(6) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal under subsection (4) and such modified action shall have effect.

(7) The Authority may direct, by notice in writing, a designated clearing house, to whom an order to cease operations of its clearing facility has been made by the Authority under subsection (1), to take such action as it considers necessary, including the following :

- (a) altering conditions of delivery;
- (b) fixing the settlement price at which securities or futures contracts are to be liquidated;
- (c) requiring margins or additional margins for any securities or futures contracts; and
- (d) modifying or suspending any of the business rules of the clearing house,

and the designated clearing house shall comply with that direction.

(8) The Authority may modify any action taken by a designated clearing house under subsection (7), including the setting aside of that action.

(9) Any person who is aggrieved by any action taken by the Authority or a designated clearing house under subsection (7) may, within 30 days after he is notified of the action, appeal to the Minister whose decision shall be final.

(10) Notwithstanding the lodging of an appeal under subsection (9), any action taken by the Authority or a designated clearing house under subsection (7) shall continue to have effect pending the determination or withdrawal of the appeal.

(11) The Minister may make such modification to any action, taken by the Authority or a designated clearing house, that is the subject of an appeal under subsection (9) and such modified action shall have effect.

(12) Subject to any direction issued by the Authority under subsection (7) to the contrary, an order of cessation made under subsection (1) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of the clearing facility operated by the designated clearing house, whether the agreement, transaction or arrangement was entered into before or after the order of the cessation; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

(13) A designated clearing house which contravenes an order of cessation made under subsection (1) 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 3 years or to both 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.

(14) A designated clearing house which fails to comply with a direction issued under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Emergency powers of Authority

78C. —(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interest of the public or a section of the public or for the protection of investors, the Authority may direct by notice in writing a designated clearing house to take such action as it considers necessary to —

- (a) maintain or restore safe and efficient clearing and settlement in securities or futures contracts or any class of securities or futures contracts; or
- (b) liquidate any position in respect of any securities or futures contract or any class of securities or futures contracts,

and the designated clearing house shall comply with that direction.

(2) Without prejudice to subsection (1), the action which the Authority may direct a designated clearing house to take includes –

- (a) altering conditions of delivery;
- (b) fixing the settlement price at which securities or futures contracts are to be liquidated;
- (c) requiring margins or additional margins for any securities or futures contracts; and
- (d) modifying or suspending any of the business rules of the clearing house,

and the designated clearing house shall comply with that direction.

(3) Where a designated clearing house fails to comply with the direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may —

- (a) set emergency margin levels in any securities or futures contract or class of securities or futures contracts; or
- (b) take such other action, including but not limited to those specified in subsection (1), as the Authority thinks fit to maintain or restore safe and efficient clearing and settlement of transactions in securities or futures contracts or any class of securities or futures contracts.

(4) In this section, “emergency” means threatened or actual market manipulations and corners, and includes —

- (a) any act of government affecting a commodity;
- (b) any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity; or
- (c) any other undesirable situations or practices which in the opinion of the Authority constitutes an emergency.

(5) The Authority may modify any action taken by a designated clearing house under subsection (1), including the setting aside of that emergency action.

(6) Any person who is aggrieved by any action taken by the Authority or a designated clearing house under this section may, within 30 days after he is notified of the action, appeal to the Minister whose decision shall be final.

(7) Notwithstanding the lodging of an appeal under subsection (5), any emergency action taken by the Authority or a designated clearing house under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(8) The Minister may make such modification to any emergency action, taken by the Authority or a designated clearing house, that is the subject of an appeal and such modified emergency action shall have effect.

(9) A designated clearing house which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to remove officer of designated clearing house

78D.-(1) Where the Authority is satisfied that an officer of a designated clearing house —

- (a) has wilfully contravened or wilfully caused that designated clearing house to contravene this Act or its business rules;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act or the business rules of that designated clearing house, by that designated clearing house or a member of that designated clearing house or a person associated with that member;
- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;

- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public, or section of the public or for the protection of investors, direct by notice in writing that designated clearing house to remove the officer from office or employment, and that designated clearing house shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of a designated clearing house has failed to discharge his duties or functions of his office for the purposes of subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct a designated clearing house to remove an officer from office or employment without giving the designated clearing house an opportunity to be heard.

(4) The Authority may direct a designated clearing house to remove from its office or employment an officer under subsection (1) on any of the following grounds without giving the designated 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 had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs a designated clearing house to remove from office or employment an officer under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) A designated clearing house that is aggrieved by the direction of the Authority to remove an officer from office or employment under subsection (1) may, within 30 days after it is notified of the direction, appeal to the Minister whose decision shall be final.

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(8) Subject to subsection (9), no criminal or civil liability shall be incurred by a designated clearing house in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(9) A designated clearing house which, without reasonable excuse, fails or refuses to comply with a written notice issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Additional powers of Authority in respect of auditors

78E. —(1) If an auditor of a designated clearing house, in the course of the performance of his duties becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the designated clearing house to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or a criminal offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts of the designated clearing house, including irregularities that affect or jeopardise or may affect or jeopardise the funds or property of investors in securities or futures contracts,

the auditor shall immediately send to the Authority a written report of the matter or irregularity.

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor has, apart from this section, as a defendant in an action for defamation.

(4) The Authority may impose all or any of the following duties on an auditor of the designated clearing house:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the designated clearing house;

- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or carrying out of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(5) The designated clearing house shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

Power of Authority to exempt designated clearing houses from obligations

78F. The Authority may exempt a designated clearing house or a class of designated clearing houses from any obligations in this Part if it is satisfied that such exemption would not detract from the objectives specified in section 51.

Subdivision 5: Immunity

Immunity from criminal or civil liability

78G. No criminal or civil liability shall be incurred by —

- (a) a designated clearing house; or
- (b) any person acting on behalf of a designated clearing house, including —
 - (i) any member of the board of directors of the designated clearing house; or
 - (ii) any member of any committee established by the designated clearing house,

for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with the discharge or purported discharge of its obligations under this Act or the business rules of the designated clearing house, including its default rules.

Division 4 – Insolvency

Application of this Division

79. This Division shall apply to such transaction or class of transactions cleared or settled by any designated clearing house or class of designated clearing houses, and to such extent as may be prescribed by the Authority.

Interpretation of this Division

79AA. —(1) In this Division, unless the context otherwise requires —

“default proceedings” means proceedings or other action taken by a designated clearing house under its default rules;

“defaulter” means a participant who is the subject of any default proceedings;

“market charge” means a security interest, whether fixed or floating, granted in favour of a designated clearing house —

(a) over property held by or deposited with the designated clearing house; and

(b) to secure liabilities arising directly in connection with the designated clearing house ensuring the performance of a market contract;

“market collateral” means property held by or deposited with a designated clearing house for the purpose of securing liabilities arising directly in connection with the designated clearing house ensuring the performance of market contracts;

“market contract” means —

(a) a contract subject to the business rules of a designated clearing house that is entered into by the designated clearing house with a participant pursuant to a novation (however described) which is both in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the designated clearing house and in accordance with the business rules of a designated clearing house whether before or after default proceedings have commenced; or

(b) a transaction which is being cleared or settled using the clearing facility of the designated clearing house and in accordance with the business rules of a designated clearing house, whether or not a novation referred to in paragraph (a) is to take place;

“property” means —

(a) money, letters of credit, banker’s drafts, certified cheques, guarantees or other similar instruments;

(b) securities;

(c) futures contracts and any similar financial contracts; or

(d) other assets of value acceptable to the designated clearing house;

“relevant office holder” means —

- (a) the Official Assignee exercising his powers under the Bankruptcy Act (Cap. 20);
- (b) a person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager, judicial manager or an equivalent officer; or
- (c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property or an equivalent officer;

“settlement”, in relation to a market contract, includes partial settlement.

(2) Where a charge is granted partly for the purpose specified in the definition of “market charge” and partly for other purposes, the charge shall be treated as a market charge under this Division in so far as it has effect for that specified purpose.

(3) Where collateral is granted partly for the purpose specified in the definition of “market collateral” and partly for other purposes, the collateral shall be treated as market collateral under this Division in so far as it has been provided for that specified purpose.

(4) References in this Division to the law of insolvency are references to —

- (a) the Bankruptcy Act;
- (b) Parts VIIIA, IX and X of the Companies Act (Cap. 50); and
- (c) any other written law whether of Singapore or a place outside Singapore which is concerned with or in any way related to the bankruptcy or insolvency of a person, but does not include the Banking Act (Cap. 19).

(5) References in this Division to settlement in relation to a market contract are references to the discharge of the rights and liabilities of the parties to the market contract, whether by performance, compromise or otherwise.

Proceedings of designated clearing house shall take precedence over law of insolvency

79A. —(1) The following shall not be to any extent invalid at law on the ground of inconsistency with the law for distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver, receiver and manager or an equivalent officer over any of the assets of a person:

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;

- (d) a contract effected by a designated clearing house for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;
- (e) a disposition of property in accordance with the business rules of a designated clearing house as to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge; and
- (i) any default proceedings.

(2) A relevant office holder, or a court applying the law of insolvency in Singapore, shall not exercise its power to prevent or interfere with —

- (a) the settlement of a market contract in accordance with the business rules of a designated clearing house or proceedings or other action taken under those business rules; or
- (b) default proceedings.

(3) Subsection (2) shall not operate to prevent a relevant office holder from recovering an amount under section 79G after the completion of a specified event referred to in section 79G (3).

(4) Where a participant which is also a bank licensed under the Banking Act (Cap. 19) becomes insolvent, the liabilities of the bank accorded priority under sections 61 and 62 of that Act and the Payment and Settlement Systems (Finality and Netting) Act 2002 (Act 39 of 2002) shall have priority over unsecured liabilities of the bank accorded priority under the provisions of this Division.

Supplementary provisions as to default proceedings

79B. —(1) A court may, on application by a relevant office holder, make an order to alter, or to release the relevant office holder from complying with, the functions of his office that are affected by default proceedings if default proceedings have been, could be, or could have been, taken.

(2) The functions of the relevant office holder shall be construed subject to an order made under subsection (1).

(3) Sections 45, 74 and 76 of the Bankruptcy Act (Cap. 20) and sections 210, 258, 260, 262 (3), 299 (1) and 309 of the Companies Act (Cap. 50) shall not prevent or interfere with any default proceedings.

Duty to report on completion of default proceedings

79C. —(1) A designated clearing house shall, upon the completion by it of default proceedings, make a report on such proceedings stating in respect of each defaulter —

- (a) the net sum, if any, certified by the designated clearing house to be payable by or to the defaulter; or
- (b) the fact that no sum is so payable,

as the case may be, and the designated clearing house may include in that report such other particulars in respect of such proceedings as it thinks fit.

(2) A designated clearing house which has made a report under subsection (1) shall supply the report to —

- (a) the Authority;
- (b) any relevant office holder acting in relation to —
 - (i) the defaulter to whom the report relates; or
 - (ii) that defaulter's estate;
- (c) if there is no relevant office holder referred to in paragraph (b), the defaulter to whom the report relates.

(3) The designated clearing house shall publish a notice of the fact that a report has been made under subsection (1) in such manner as it thinks appropriate to bring that fact to the attention of the creditors of the defaulter to whom the report relates.

(4) Where a relevant office holder or defaulter receives under subsection (2) a report made under subsection (1), he shall, at the request of a creditor of the defaulter to whom the report relates —

- (a) make the report available for inspection by the creditor; and
- (b) on payment of such reasonable fee as the relevant office holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.

(5) In subsections (2), (3) and (4), “report” includes a copy of a report.

Net sum payable on completion of default proceedings

79D. —(1) This section shall apply to any net sum certified under section 79C (1) (a) by a designated clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Notwithstanding section 87 or 88 of the Bankruptcy Act (Cap. 20), and section 327 of the Companies Act (Cap. 50), where a receiving or winding up

order has been made, or a resolution for voluntary winding up has been passed, any net sum as certified under section 79C (1) (a) shall be —

- (a) provable in the bankruptcy or winding up or, as the case may be, payable to the relevant office holder; and
- (b) taken into account, where appropriate, under section 88 of the Bankruptcy Act or section 327 of the Companies Act.

Disclaimer of onerous property, rescission of contracts, etc.

79E. —(1) Section 110 of the Bankruptcy Act and section 332 of the Companies Act shall not apply to —

- (a) a market contract;
- (b) a contract effected by a designated clearing house for the purpose of realising property provided as market collateral;
- (c) a market charge; or
- (d) any default proceedings.

(2) Section 77 of the Bankruptcy Act (Cap. 20) and sections 259 and 299 (1) of the Companies Act (Cap. 50) shall not apply to any act, matter or thing which has been done under —

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by a designated clearing house for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;
- (e) a disposition of property in accordance with the business rules of a designated clearing house relating to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

Adjustment of prior transactions

79F. —(1) No order shall be made by a court under —

- (a) section 98 or 99 of the Bankruptcy Act;
- (b) section 227T, 329 or 331 of the Companies Act; or
- (c) section 73B of the Conveyancing and Law of Property Act (Cap. 61),

in relation to any matter to which this section applies.

(2) The matters to which this section applies are specified as follows:

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by a designated clearing house for the purpose of realising property provided as market collateral;
- (e) a disposition of property in accordance with the business rules of a designated clearing house relating to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge; and
- (i) any default proceedings.

Right of relevant office holder to recover certain amounts arising from certain transactions

79G. —(1) Where a participant (referred to as the first participant) sells securities at an over-value to, or purchases securities at an under-value from, another participant (referred to as the second participant) in circumstances as described in subsection (3), and thereafter a relevant office holder acts for —

- (a) the second participant;
- (b) the principal of the second participant in the sale or purchase; or
- (c) the estate of the second participant or of the person referred to in paragraph (b),

then, unless a court otherwise orders, the relevant office holder may recover, from the first participant, or the principal of the first participant, an amount

equal to the specified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

(2) The amount equal to the specified gain is recoverable even if the sale or purchase may have been discharged according to the business rules of a designated clearing house and replaced by a market contract.

(3) The circumstances referred to in subsection (1) for a sale or purchase shall be when —

- (a) a specified event has occurred in relation to the second participant or the principal of the second participant;
- (b) either —
 - (i) the first participant knew, or ought reasonably to have known that a specified event was likely to occur in relation to the second participant or the principal of the second participant; or
 - (ii) the principal of the first participant knew or ought reasonably to have known that a specified event was likely to occur to the second participant or the principal of the second participant,

and the specified event occurs within the period of 6 months immediately following the date on which the sale or purchase was entered into.

(4) In this section —

“specified event” , in relation to a second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means —

- (a) the making of a bankruptcy order against the second participant or that person, as the case may be;
- (b) the making of a statutory declaration in respect of the second participant or that person, as the case may be, under section 291 (1) of the Companies Act (Cap. 50);
- (c) the summoning of a meeting of creditors in relation to the second participant or that person, as the case may be, under section 296 of the Companies Act;
- (d) the presentation of a petition for the winding up of the second participant or that person, as the case may be, before a court; or
- (e) the making of a judicial management order by a court under Part VIIIA of the Companies Act in respect of the second participant or that person, as the case may be;

"specified gain" , in relation to a sale or purchase referred to in subsection (1), means the difference between —

- (a) the market value of the securities which are the subject of the sale or purchase; and
 - (b) the value of the consideration for the sale or purchase,
- as at the time the sale or purchase was entered into.

Application of market collateral not affected by certain other interest, etc.

79H. —(1) The provisions of this section shall have effect with respect to the application by a designated clearing house of property provided as market collateral (referred to as the property).

(2) The property may be applied in accordance with the business rules of a designated clearing house so far as it is necessary for it to be so applied notwithstanding —

- (a) any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the designated clearing house had actual notice of the interest, right or breach of duty (but not including any interest or right arising from the situation referred to in paragraph (b)), as the case may be, at the time the property was provided as market collateral; or
- (b) that the property is deposited by the designated clearing house in a trust account held for the benefit of a participant.

(3) No right or remedy arising subsequent to the provision of the property as market collateral may be enforced to prevent or interfere with the application of the property by the designated clearing house in accordance with its business rules.

(4) Where a designated clearing house has power under this section to apply the property notwithstanding an interest, right or remedy, a person to whom the designated clearing house disposes of the property in accordance with its business rules shall take free from that interest, right or remedy.

Enforcement of judgments over property subject to market charge, etc.

79I. —(1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the designated clearing house concerned.

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted by any court with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

Law of insolvency in other jurisdictions

79J. —(1) Notwithstanding any written law or rule of law, a court shall not recognise or give effect to —

- (a) an order of a court exercising jurisdiction under the law of insolvency in a place outside Singapore; or
- (b) an act of a person appointed in a place outside Singapore to perform a function under the law of insolvency there,

in so far as the making of the order or doing of the act would be prohibited under this Act for a court in Singapore or a relevant office holder.

(2) For the purposes of this section, “law of insolvency”, in relation to a place outside Singapore, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Singapore.

Participant to be party to certain transactions as principal

79K. —(1) Where a participant —

- (a) in his capacity as such enters into any transaction (including a market contract) with a designated clearing house; and
- (b) but for this subsection or any provision in the business rules or default rules of a designated clearing house, would be a party to that transaction as agent,

then, notwithstanding any other written law or rule of law, as between, but only as between, the designated clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any action, claim or demand, either civil or criminal) —

- (i) be deemed not to be a party to that transaction as agent; and
- (ii) be deemed to be a party to that transaction as principal.

(2) Where —

- (a) 2 or more participants in their capacities as such enter into any transaction; and
- (b) but for this subsection, any of the participants would be a party to that transaction as agent,

then, notwithstanding any other written law or rule of law, a participant to whom paragraph (b) applies shall for all purposes (including an action, claim or demand, either civil or criminal), except as between, but only as between, him and the person who is his principal in respect of that transaction —

- (i) be deemed not to be a party to the transaction as agent; and

- (ii) be deemed to be party to the transaction as principal.

Preservation of rights, etc.

79L. Except to the extent that it expressly provides, this Division shall not operate to limit, restrict or otherwise affect —

- (a) any right, title, interest, privilege, obligation or liability of a person; or
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

Immunity from criminal or civil liability

79M. —(1) No criminal or civil liability shall be incurred by —

- (a) a person discharging, by virtue of a delegation under the default rules of a designated clearing house, an obligation of the designated clearing house in connection with any default proceedings; or
- (b) any person acting on behalf of a person referred to in paragraph (a), including —
 - (i) any member of the board of directors of the last-mentioned person; and
 - (ii) any member of any committee established by the last-mentioned person,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of that obligation.

(2) Where a relevant office holder takes action in relation to any property of a defaulter which is liable to be dealt with in accordance with the default rules of a designated clearing house, and reasonably believes or has reasonable grounds for believing that he is entitled to take that action, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage (as the case may be) is caused by the office holder's own negligence.

Division 5 – General Powers of the Authority

Power of Authority to make regulations

80.-(1) Without prejudice to section 341, the Authority may make regulations relating to requirements applicable to any person operating a clearing facility, whether the person has been designated by the Authority as a designated clearing house under section 58(1) or not.

- (2) Regulations made under this section may provide –
- (a) that a contravention of any specified provision thereof shall be an offence; and
 - (b) for penalties not exceeding a fine of \$150,000 or imprisonment of a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, to a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

Power of Authority to issue directions

80A.-(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring the safe and efficient clearing and settlement of transactions;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction as may be imposed by the Authority under sections 63 (2) (b), 63 (2) (c), 76(2), 78A(1) or 78A(2), or such other obligations or requirements under this Act,

issue directions by notice in writing either of a general or specific nature to a designated clearing house, and the designated clearing house shall comply with such directions.

(2) A designated clearing house which, without reasonable excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(3) For avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

Part IIIA
Approved Holding Companies

Objectives of this Part

- 81.** The objectives of this Part are to –
- (a) to provide a regulatory framework for the establishment and operation of holding companies of approved exchanges or designated clearing houses that are fit and proper to perform the functions of such holding companies; and
 - (b) reduce systemic risk.

Division 1- Establishment of Approved Holding Companies

Requirement for approval

81A.-(1) No corporation shall be the holding company of any approved exchange, designated clearing house, or of any corporation that is an approved holding company unless the corporation is an approved holding company.

(2) Any corporation which contravenes subsection (1) 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 3 years or to both 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.

Application for approval

81B.-(1) A corporation may apply to the Authority to be an approved holding company.

(2) An application made under subsection (1) shall be made in such form and manner as the Authority may prescribe, and shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

(3) The Authority may require an applicant to furnish it with such information or documents as the Authority considers necessary in relation to the application.

Annual fees

81BA.-(1) Every approved holding company shall pay to the Authority such annual fees as may be prescribed.

(2) The annual fees shall be paid in such manner as may be specified by the Authority.

- (3) The Authority may exempt, wholly or in part, any approved holding company from the payment of the annual fees prescribed under this section.
- (4) The Authority may, where it considers appropriate, refund the whole or part of any annual fee paid to it.

Power of Authority to approve holding companies

81C.-(1) Where an application is made under section 81B(1), the Authority may approve the corporation as an approved holding company subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing, if the Authority is satisfied that it would not be contrary to the interests of the public or contrary to the objectives referred to in section 81 to approve the corporation.

(2) The Authority may, at any time, by notice in writing to the corporation, vary any condition or restriction or impose such further conditions or restrictions as it may think fit.

(3) An approved holding company shall, for the duration of the approval, continue to satisfy the conditions or restrictions imposed on it under subsection (1) or (2).

(4) Subject to subsection (5), the Authority shall not refuse to approve a corporation under subsection (1) without giving the corporation an opportunity to be heard.

(5) The Authority may refuse to approve a corporation on the ground that it would be contrary to the interests of the public to grant the approval on the basis of 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 an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation; or
- (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 had acted fraudulently or dishonestly.

(6) The Authority shall give notice in the *Gazette* of any corporation approved under subsection (1).

(7) An applicant that is aggrieved by the refusal of the Authority to grant an approval may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(8) Any corporation which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and

in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Cancellation of approval

81CA. (1) An approved holding company may apply to the Authority to cancel its approval.

(2) The Authority may cancel the approval if it is satisfied that the approved holding company referred to in subsection (1) has ceased its activities as a holding company of an approved exchange or designated clearing house.

Power of Authority to revoke approval

81D.-(1) The Authority may revoke any approval granted to a corporation if

- (a) the corporation ceases to be the holding company of any approved exchange or designated clearing house;
- (b) the corporation is being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (c) the corporation contravenes any condition or restriction applicable in respect of its approval, any direction issued to him by the Authority under this Act or any other provision in this Act;
- (d) the corporation is operating in a manner that is, in the opinion of the Authority, contrary to the interest of the public; or
- (e) any information or document furnished by the corporation to the Authority under this Act is false or misleading.

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any approval granted to a corporation without giving the corporation an opportunity to be heard.

(3) The Authority may revoke an approval granted to a corporation on the ground that it would be contrary to the interests of the public on the basis of any of the following circumstances 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 an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation; or
- (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 had acted fraudulently or dishonestly.

(4) A corporation which is aggrieved by the decision of the Authority in relation to it made under subsection (1) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(5) Notwithstanding the lodging of an appeal under subsection (4), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister or withdrawal of the appeal.

(6) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

(7) The Authority shall give notice in the *Gazette* of any revocation of approval referred to in subsection (1).

Division 2- Regulation of Approved Holding Companies

Listing of approved holding companies on securities market

81E.-(1) The securities of an approved holding company may be listed for quotation on a securities market that is operated by any of its related corporations if the approved holding company and the operator of the securities market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of trading of the securities of the approved holding company,

and the approved holding company and operator of the securities market shall comply with such requirements.

(2) Where the securities of an approved holding company are listed for quotation on a securities market operated by a related corporation of the approved holding company, the listing rules of that securities market shall be deemed to allow the Authority, instead of the operator of the securities market, to make decisions and to take action, to require the operator of the securities market to make decisions and to take action on the Authority's behalf, on —

- (a) the admission to or removal of the approved holding company from the official list of securities market; and
- (b) granting, stopping or suspending the securities of the approved holding company from being listed for quotation or quoted on the securities market.

(3) The Authority may, by notice in writing to the operator of the securities market —

- (a) modify the listing rules of the securities market for the purpose of their application to the listing for quotation or trading of the securities of the approved holding company; and
- (b) waive the application of any listing rule of the securities market to the approved holding company.

(4) An approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Obligation to notify Authority of certain matters

81F.-(1) An approved holding company shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of such occurrence:

- (a) any material change to the information provided by the approved holding company in its application under section 81B;
- (b) the approved holding company becoming aware of any matter which may reasonably indicate that it has breached, or that it may not be able to satisfy or comply with, a condition, restriction, obligation or requirement under this Act or as may be prescribed by the Authority;
- (c) the carrying on of any activity by the approved holding company other than -
 - (i) performing any of the functions of a holding company of an approved exchange or designated clearing facility;
 - (ii) carrying on of any activity incidental to being a holding company of an approved exchange or designated clearing facility; or
 - (iii) carrying on of such business or class of business as the Authority may prescribe;
- (d) the acquisition by the approved holding company of a substantial shareholding in a corporation which does not -
 - (i) perform of any functions of a holding company of an approved exchange or designated clearing facility;
 - (ii) carry on any activity incidental to being a holding company of an approved exchange or designated clearing facility; or
 - (iii) carry on such business or class of business as the Authority may prescribe;

- (e) any other matter that the Authority may specify by regulation or notice in writing to the approved holding company.

(2) Without prejudice to the generality of section 81L (1), the Authority may, at any time after receiving the notification specified under subsection (1), issue directions to the approved holding company –

- (a) in the case of the matter specified in subsection (1) (b), for the purpose of securing compliance with any condition, restriction, obligation or requirement;
- (b) in the case of the matter specified in subsection (1) (c) -
 - (i) to cease performing the functions or carrying on of the activity or business referred to in subsection (1) (c); or
 - (ii) to perform the functions or carry on the activity or business referred to in subsection (1)(c) on such conditions or restrictions as the Authority may impose if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 81L (1); or
- (c) in the case of the matter specified in subsection (1) (d) –
 - (i) to dispose of the shareholding referred to in subsection (1) (d); or
 - (ii) to exercise its rights relating to such shareholding on such conditions or restrictions as the Authority may impose if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 81L (1).

and the approved holding company shall comply with such directions.

(3) An approved holding company which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Obligation to assist Authority

81G.-(1) An approved holding company shall provide such assistance to the Authority as the Authority may reasonably require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of such books and other information –

- (a) relating to the activities of the approved holding company; or
- (b) in respect of any other specified information as the Authority may require for the proper administration of this Act.

(2) An approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

\$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Obligation to maintain confidentiality

81H.-(1) Subject to subsection (2), an approved holding company, and any of its officers or employees shall maintain, and aid in maintaining secrecy with regard to any user information.

(2) Subsection (1) shall not apply to –

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe; or
- (b) the disclosure of user information which is authorised by the Authority to be disclosed or furnished.
- (c) the disclosure of user information pursuant to a requirement imposed by the Government or any statutory body or any requirement imposed under any written law.

(3) Any person who contravenes subsection (1), directly or indirectly, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000.

(4) For the avoidance of doubt, nothing in this section shall be construed to prevent an approved holding company from entering into an express agreement with a user which obliges the approved holding company to maintain a higher degree of confidentiality than that specified in this section.

Control of substantial shareholdings in approved holding companies

81I.-(1) No person shall enter into any agreement to acquire shares by virtue of which he would, if the agreement had been carried out, acquire a substantial shareholding in an approved holding company without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to enter 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 (7), 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 approved holding company in which the substantial shareholder has or has had an interest.

(4) Until the person to whom a direction is issued under subsection (3) transfers or disposes of the shares which are the subject of the direction, and

notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association of the approved holding company —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the approved holding company shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the approved holding company, the approved holding company shall not make any payment (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(5) Any issue of shares by the approved holding company in contravention of subsection (4) (b) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return those shares to the approved holding company, upon which the approved holding company shall return to the person any payment received from him in respect of those shares.

(6) Any payment made by the approved holding company in contravention of subsection (4) (c) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return the payment he has received to the approved holding company.

(7) Any person who contravenes subsection (1) 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 \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(8) Any person who contravenes subsection (4) (b) or (c), (5) or (6) or any direction issued by the Authority under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Approval of chief executive officer, director and key management officer

81J.-(1) An approved holding company shall ensure that it appoints or employs fit and proper persons as its chief executive officer, directors and key management officers.

(2) No approved holding company shall appoint a person as its chief executive officer or director unless the approved holding company has obtained the approval of the Authority.

(3) The Authority may, by notice in writing, require an approved holding company to obtain the approval of the Authority for the appointment of any

person to any key management position or committee of the approved holding company and the approved holding company shall comply with the notice.

(4) An application for approval under subsection (1) or (2) shall be made in such form and manner as the Authority may prescribe.

(5) Without prejudice to the generality of section 81K and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

(6) Subject to subsection (7), the Authority shall not refuse an application for approval under this section without giving the approved holding company an opportunity to be heard.

(7) The Authority may refuse an application for approval on any of the following grounds without giving the approved holding company 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 had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(8) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(9) An approved holding company shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chief executive officer, director or persons referred to in the notice issued by the Authority under subsection (2).

(10) In this section, “committee” includes any committee of directors, disciplinary committee, appeals committee, or any other body responsible for disciplinary action against a member of the approved exchange.

(11) An approved holding company which contravenes subsection (1), (2), (3) or (9) shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to make regulations

81K.-(1) Without prejudice to section 341, the Authority may make regulations relating to the approval of, and requirements applicable to, persons who establish, operate, or assist in establishing or operating approved holding companies.

(2) Regulations made under this section may provide –

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for penalties not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

Power of Authority to issue directions

81L.-(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring fair, orderly and transparent markets;
- (b) for ensuring safe and efficient clearing facilities;
- (c) for ensuring the integrity and stability of capital markets or the financial system.
- (d) in the interests of the public or a section of the public or for the protection of investors;
- (e) for the effective administration of this Act; or
- (f) for ensuring compliance with any condition or restriction as may be imposed by the Authority under section 81C (1), 81F (2) (b), 81F (2) (c) or 81I (2), or such other obligations or requirements under this Act or as may be prescribed by the Authority,

issue directions by notice in writing either of a general or specific nature to an approved holding company, and the approved holding company shall comply with such directions.

(2) An approved holding company which, without reasonable justification or excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(3) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

Power of Authority to remove officers of an approved holding company

81M.-(1) Where the Authority is satisfied that an officer of an approved holding company —

- (a) has wilfully contravened or wilfully caused that approved holding company to contravene this Act;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act by that approved holding company;
- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interests of the public, or a section of the public or for the protection of investors, direct by notice in writing that approved holding company to remove the officer from office or employment and that approved holding company shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of an approved holding company has failed to discharge the duties or functions of his office for the purposes of subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct an approved holding company to remove an officer from office or employment without giving the approved holding company an opportunity to be heard.

(4) The Authority may direct an approved holding company to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the approved 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 had acted fraudulently or dishonestly; and
- (ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs an approved holding company to remove the officer from office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) An approved holding company that is aggrieved by a direction of the Authority under subsection (1) may, within 30 days after it is notified of the direction, appeal to the Minister whose decision shall be final.

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(8) Subject to subsection (9), no criminal or civil liability shall be incurred by an approved holding company in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(9) An approved holding company which, without reasonable justification or excuse, contravenes a written notice issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Additional powers of Authority in respect of auditors

81N. —(1) If an auditor of an approved holding company, in the course of the performance of his duties as an auditor, becomes aware —

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved holding company to a material extent;
- (b) of any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or a criminal offence involving fraud or dishonesty; or
- (c) of any irregularity that has or may have a material effect upon the accounts of the approved holding company, including irregularities that affect or jeopardise or may affect or jeopardise the funds or property of investors in securities or futures contracts,

the auditor shall immediately send to the Authority a report in writing of the matter or the irregularity.

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor has, apart from this section, as a defendant in an action for defamation.

(4) The Authority may impose all or any of the following duties on an auditor of an approved holding company:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved holding company;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit examination or carrying out of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(5) The approved holding company shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

Amendment of section 83

6. Section 83 of the principal Act is amended —

(a) by deleting the words “unless he is the holder of a representative’s licence for that regulated activity” in subsection (1) and substituting the following words:

“unless —

- (a) he is the holder of a representative’s licence for that regulated activity; and
- (b) when so acting or holding himself out, he is doing so for the holder of a capital markets services licence which supported his application for, or renewal of, the representative’s licence, as the case may be, subject, however, to regulations made under this Act.”; and

(b) by deleting subsection 83(2) and substituting the following subsection:

“(2) Subsection (1) shall not apply to —

- (a) any person who acts as a representative of an exempt person, in so far as —

- (i) the type and scope of regulated activity carried out by the first-mentioned person are the same as those carried out by the exempt person in that capacity; and
 - (ii) the manner in which the first-mentioned person carries out the regulated activity is the same as the manner in which the exempt person carries out the regulated activity in that capacity;
- (b) any person, who acts as a representative of a person specified in the Third Schedule to the Act (other than a person specified in paragraph 9 of that Schedule), in so far as –
- (i) the type and scope of regulated activity carried out by the first-mentioned person are the same as those carried out by the second-mentioned person in that capacity; and
 - (ii) the manner in which the first-mentioned person carries out the regulated activity is the same as the manner in which the second-mentioned person carries out the regulated activity in that capacity;
- (c) any person who acts as a representative of a foreign company specified in paragraph 9 of the Third Schedule to the Act, in so far as the first-mentioned person complies with any conditions or restrictions imposed on the foreign company pursuant to an approval granted for the arrangement between the foreign company and its related corporation under that paragraph, where those conditions and restrictions are applicable to the first-mentioned person; and
- (d) any person whom the Authority may exempt from holding a representative’s licence in respect of any regulated activity.”.

Amendment of section 84

7. Section 84 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) The Authority may require an applicant to furnish it with such information or document as the Authority considers necessary in relation to the application.”

Amendment of section 86

8. Section 86 of the principal Act is amended –

- (a) by inserting, immediately after subsection (4)(a), the following:
 - “(aa) any information or document that is furnished by the applicant is false or misleading;”
- (b) by inserting the words “or employees” immediately after the words “any of its officers” in subsection (4)(m); and
- (c) by deleting the words “a right” in subsection (5) and substituting the words “an opportunity”.

Amendment of section 87

9. Section 87 of the principal Act is amended by inserting, immediately after subsection (3)(a), the following:

- “(aa) any information or document that is furnished by the applicant is false or misleading;”

Amendment of section 88

10. Section 88 of the principal Act is amended by deleting subsection (4).

Amendment of section 92

11. Section 92 of the principal Act is amended -

- (a) by deleting the word “wilfully” in subsections (a) and (b) and substituting the words “without reasonable excuse;”;
- (b) by deleting the words “, knowing it to be false or misleading” in subsection (a); and
- (c) by deleting the words “or to imprisonment for a term not exceeding 12 months or to both” in the 8th and 9th lines.

Amendment of section 95

12. Section 95 of the principal Act is amended –

- (a) by deleting paragraph (i) of subsection (2)(a) and substituting the following:
 - “(i) any event has occurred that would have entitled the Authority to refuse an application under section 86, if such an application is made after the occurrence of the event;”;
- (b) by deleting the word “or” between paragraphs (iii) and (iv) of subsection (2)(a);
- (c) by deleting the word “and” between paragraph (iv) of subsection (2)(a) and subsection (2)(b);

(d) by inserting, immediately after paragraph (iv) of subsection (2)(a), the following:

“(v) the Authority has reason to believe that the holder of the capital markets services licence is carrying on his business in any regulated activity for which it was licensed, in a manner that is contrary to the interests of the public; or

(vi) any information or document that is furnished by the holder of the capital markets services licence to the Authority is false or misleading; and”;

(e) by deleting paragraph (i) of subsection (2)(b) and substituting the following:

“(i) any event has occurred that would have entitled the Authority to refuse an application under section 87 or 87A, as the case may be, if such an application is made after the occurrence of the event;”;

(f) by deleting the word “or” between paragraphs (iv) and (v) of subsection (2)(b);

(g) by inserting, immediately after paragraph (iv) of subsection (2)(b), the following:

“(v) the Authority has reason to believe that the representative is performing his functions in a manner that is contrary to the interests of the public;”;

(h) by re-numbering the existing paragraph (v) of subsection (2)(b) as paragraph (vi); and

(i) by inserting, immediately after paragraph (vi) of subsection (2)(b), the following:

“(vii) any information or document that is furnished by the representative to the Authority is false or misleading;”.

Amendment of section 96

13. Section 96 of the principal Act is amended by repealing subsection (6).

Amendment of section 97

14. Section 97 of the principal Act is amended –

(a) by deleting the words “justification or” in subsection (1)(b); and

(b) by deleting the words “a right” in subsection (3) and substituting the words “an opportunity”.

Amendment of section 99

15. Section 99 of the principal Act is amended

(a) by deleting subsection (1)(e);

(b) by deleting subsection (1)(f) and substituting the following:

“(f) any securities exchange, futures exchange, recognised market operator or approved holding company in respect of any regulated activity that is solely incidental to its operation of a securities market or futures market or to its performance as an approved holding company, as the case may be;”.and

(c) by deleting subsections (2) and (3).

Amendment of section 103

15A. Section 103 of the principal Act is amended by deleting the words "justification or".

Amendment of section 105

15B. Section 105 of the principal Act is amended by deleting the words "justification or".

Amendment of section 118

16. The principal Act is amended by renumbering section 118 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) Subsection (1) shall not apply to the sale or purchase of a futures contract which is not traded on a futures exchange or cleared by a designated clearing house.”

Repeal of section 119

17. Section 119 of the principal Act is repealed.

Repeal and re-enactment of section 120

18. Section 120 of the principal Act is repealed and the following section substituted therefor:

“Disclosure of certain interest in respect of underwriting agreement

120. –(1) Where –

- (a) securities have been offered for subscription or purchase;
and
- (b) a holder of a capital markets services licence has subscribed for or purchased, or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased,

the holder shall not, during the period of 90 days after the close of the offer referred to in (a) –

- (i) make an offer to sell those securities otherwise than in the ordinary course of trading on a securities exchange or recognised market operator; or
- (ii) make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to those securities,

unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(2) For the purpose of subsection (1), any reference to an offer shall be construed as including a reference to a statement, however expressed, that expressly or impliedly invites a person to whom it is made to offer to acquire securities.”

Repeal of section 121

19. Section 121 of the principal Act is repealed.

Amendment of section 122

20. Section 122 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Subsection (1) shall not apply to the holder of a capital markets services licence or a representative of such a holder if his customer required the purchase or sale of securities or futures contracts on behalf of the customer to be effected only on specified conditions and he has been unable to purchase or sell the securities or futures contracts by reason of those conditions or when carrying out the act referred to in subsection (1) under such other circumstances as may be prescribed by the Authority.”

Amendment of section 124

21. Section 124 of the principal Act is amended by deleting the words “justification or”.

Amendment of section 162

22. Section 162 of the principal Act is amended by deleting the words “justification or” in subsections (1) and (5).

Amendment of section 168

23. Section 168 of the principal Act is amended by deleting the words “justification or” in subsections (1) and (5).

Amendment of section 203

24. Section 203 of the principal Act is amended –

- (a) by deleting the words “listing rules of the securities exchange” in subsection (1) and substituting the words “ securities exchange under the listing rules or any other requirement of the securities exchange,”;
- (b) by deleting the words “under the listing rules of the securities exchange” in subsection (2) and substituting the words “by the securities exchange under the listing rules or any other requirement of the securities exchange”; and
- (c) by deleting subsection 4 .

Amendment of section 223

25. Section 223 of the principal Act is amended -

- (a) by deleting the words “subscribing for securities” in subsection (1)(a) and substituting the words “subscribing for, or purchasing, securities”;
- (b) by deleting the words “subscribed for under” in subsection (1)(c) and substituting the words “subscribed for, or purchased, under”; and
- (c) by deleting the words “subscribe for” wherever they appear in subsection (2)(b) and substituting in each case the words “subscribe for, or purchase,”.

Amendment of section 232(7)

26. Section 232(7) of the principal Act is amended by deleting the words “sue for and”.

Amendment of section 239

27. Section 239 of the principal Act is amended —

(a) by inserting the definition of “auditor” in subsection (1):

“auditor” means a public accountant within the meaning of the Companies Act (Cap.50) and, in relation to a corporation or other entity (not being a company), includes a person qualified to act as auditor of the corporation or entity under the law of the place in which the corporation is incorporated or the place in which the entity is formed or constituted, as the case may be;”;

(b) by deleting the definition of “borrowing corporation” in subsection (1) and substituting the following definition:

“borrowing entity” means an entity that is or will be under a liability (whether or not such liability is present or future) to repay any money received by it in response to an invitation to subscribe for or purchase debentures of the entity;”;

(c) by inserting, immediately after the definition of “debenture” in subsection (1), the following definition:

““debenture issuance programme” means any scheme or arrangement by an entity for the issue of debentures or units of debentures where only part of the maximum amount or aggregate number of debentures or units of debentures under the programme is offered initially and a further tranche or tranches may be offered subsequently;”;

(d) by inserting, immediately after the definition of “expert” in subsection (1), the following definition:

““entity” includes a corporation, an unincorporated association, a partnership and the government of any State;”

(e) by inserting, immediately after the definition of “guarantor corporation” in subsection (1), the following definition:

““issuer”, in relation to an offer of securities, means the entity which issued or will be issuing the securities being offered;”;

(f) by deleting the definition of “minimum subscription” in subsection (1) and substituting the following definition:

““minimum subscription” in relation to any securities offered for subscription, means the amount stated in the prospectus relating to the offer, as the minimum amount which must be raised by the issue of the securities so offered failing which no securities will be allotted or issued;”;

- (g) by deleting the words “number of, shares in or debentures of, or units of shares in or debentures of, a corporation” in the 4th and 5th lines of the definition of “preliminary document” in subsection (1) and substituting the words “number of securities,”;
- (h) by deleting the words “a corporation, means a promoter of the corporation” in the 2nd line of the definition of “promoter” in subsection (1) and substituting the words “an entity, means a promoter of the entity”;
- (i) by deleting the words “other document inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of, or any units of shares in or debentures of, a corporation or proposed corporation” in the 2nd to 7th lines of the definition of “prospectus” in subsection (1) and substituting the words “other document used to make an offer of securities”;
- (j) by inserting, immediately after the definition of “replacement document” in subsection (1), the following definition:
 - ““securities” means debentures or units of debentures of an entity, or shares or units of shares of a corporation;”
- (k) by inserting, immediately after the definition of “supplementary document” in subsection (1), the following definition:
 - ““underlying entity”, in relation to an offer of securities, means the entity (not being the issuer) whose securities underlie the offer;”;
- (l) by inserting, immediately after subsection (1), the following subsection:
 - “(1A) For the purposes of this Division, “recognised securities exchange” means a corporation declared by the Authority, by order in the Gazette, as a recognised securities exchange for the purposes of this Division.”;
- (m) by deleting subsections (3) and (3A) and substituting the following subsections therefor:
 - “(3) For the purposes of this Division –
 - (a) any invitation to a person to deposit money with or to lend money to an entity shall be deemed to be an offer of debentures of the entity; and
 - (b) any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the entity in respect of any money that is or may be deposited

with or lent to the entity in response to such an invitation shall be deemed to be a debenture.

(3A) Notwithstanding subsection (3) –

- (a) any invitation to a person by a prescribed entity to make a deposit with the prescribed entity is not an offer of debentures; and
- (b) the following documents issued or intended or required to be issued by a prescribed entity are not debentures:
 - (i) any certificate of deposit;
 - (ii) any other document acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the prescribed entity in respect of any deposit that is or may be made with the prescribed entity.”;

(n) by deleting subsection (4) and substituting the following subsection:

“(4) In subsection (3A) –

“deposit” has the same meaning as in section 4B(4) of the Banking Act (Cap. 19); and

“prescribed entity” means –

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

(o) by deleting subsections (6) and (7) and substituting the following subsections therefor:

“(6) For the purposes of this Division, a person makes an offer of any securities if, and only if, as principal -

- (a) he makes (either personally or by an agent) an offer which upon acceptance would give rise to a contract for the issue or sale of those securities by him or another person with whom he has made arrangements for that issue or sale; or
- (b) he invites (either personally or by an agent) another person to make an offer which upon acceptance would give rise to a contract for the issue or sale of those securities by him or another person with whom he has made arrangements for that issue or sale.

(7) For the purpose of subsection (6), “sale” includes any disposal for valuable consideration.”; and

- (p) by deleting the words “offers or invitations to the public to subscribe for or purchase shares, debentures, or units of shares or debentures,” in subsection (8) and substituting the words “offers of securities”.

Amendment of section 239A

28. Section 239A of the principal Act is amended —

- (a) by deleting the words “offer to the public of, or an invitation to the public to subscribe for or purchase, shares, debentures or units of shares or debentures” in paragraph (a) and substituting the words “offer of securities”; and
- (b) by deleting the words “that offer or invitation or a class of offers or invitations to which that offer or invitation belongs” in paragraph (b) and substituting the words “that offer or a class of offers to which that offer belongs”.

Amendment of section 240

29. Section 240 of the principal Act is amended —

- (a) by deleting the words “an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation unless such offer or invitation” in subsection (1) and substituting the words “an offer of securities unless the offer”;
- (b) by deleting the words “or invitation” in subsection (1)(a);
- (c) by deleting paragraph (ii) of subsection (1)(a) and substituting the following paragraph therefor:
- “(ii) a copy of which, being one that has been signed in accordance with subsection (4A), is lodged with the Authority; and”;
- (d) by deleting the words “offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation,” in the 1st to the 5th lines of subsection (4) and substituting the words “offer of securities”;
- (e) by deleting the words “or invitation” in subsection (4)(a);
- (f) by deleting paragraph (b) of subsection (4) and substituting the following paragraph therefor:
- “(b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection

(4A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;”

- (g) by deleting the words “or invitation” in subsection (4)(e);
- (h) by inserting, immediately after subsection (4), the following subsections:

“(4A) The copy of a prospectus or profile statement lodged with the Authority shall be signed –

- (a) where the person making the offer is the entity which issued the securities to which the offer relates –
 - (i) in a case where that entity is not the government of a State, by every director or equivalent person of that entity and every person who is named therein as a proposed director or equivalent person of that entity; or
 - (ii) in a case where that entity is the government of a State, by an official of that government who is authorized to sign the prospectus on its behalf;
- (b) where the person making the offer is an individual and the entity which issued the securities to which the offer relates –
 - (i) is not the government of a State --
 - (A) by that person; and
 - (B) by every director or equivalent person of that entity and every person who is named therein as a proposed director or equivalent person of that entity;
 - (ii) is the government of a State, by that person;
- (c) where the person making the offer is an entity (not being the government of a State) and is not the entity which issued the securities to which the offer relates-
 - (i) in a case where the second-mentioned entity is not the government of a State –
 - (A) by every director or equivalent person of the first-mentioned entity; and
 - (B) by every director or equivalent person of the second-mentioned entity, and every person who is named therein as a proposed director or equivalent person of that entity; or

- (ii) in a case where the second-mentioned entity is the government of a State, by every director or equivalent person of the first-mentioned entity; and
- (d) where the person making the offer is the government of a State and is not the entity which issued the securities to which the offer relates -
 - (i) in a case where that entity is not the government of another State –
 - (A) by an official of the government of the State who is authorized to sign the prospectus on its behalf; and
 - (B) by every director or every equivalent person of that entity, and every person who is named therein as a proposed director or equivalent person of that entity; or
 - (iii) in a case where that entity is the government of another State, by an official of the government of the first-mentioned State who is authorized to sign the prospectus on its behalf.

(4B) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a director or equivalent person of an entity, or by a person named therein as a proposed director or equivalent person of an entity, is satisfied if the copy is signed by that director, equivalent person or proposed director or equivalent person or by a person who is authorised in writing by such director, equivalent person or proposed director or equivalent person to sign on his behalf. ”;

- (i) by deleting subsection (5) and substituting the following subsection therefor:

“(5) No person shall make any offer of securities of an entity that has not been formed or does not exist.”;

- (j) by deleting subsection (6);
- (k) by deleting subsection (8) and substituting the following subsections therefor:

“(8) The Authority may register a prospectus or a profile statement on any day between the 14th and 21st day (both days inclusive) from the date of lodgment thereof with the Authority, unless –

- (a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (15);

- (b) the Authority gives notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement –
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (15);
- (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends –
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (15);
or
- (d) the person making the offer gives notice in writing to the Authority to withdraw the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

(8A) Where, after a notice of an opportunity to be heard has been given under subsection (8)(a), (b)(ii) or (c)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate; except that that date shall not be earlier than the 14th day from the date of lodgment of the prospectus or profile statement with the Authority.”;

- (l) to delete the word “containing” in the 3rd line of subsection (9) and substituting the words “which has been signed in accordance with subsection (4A) and which contains”;
- (m) to delete the words “furnished to” in the 6th line of subsection (9) and substituting the words “lodged with”;
- (n) by inserting, immediately after subsection (9), the following subsections:
 - “(9A) A person making an offer may lodge any amendment to a prospectus or profile statement, where applicable, in respect of that offer at any time before but not after the registration of the prospectus or profile statement by the Authority.
- (o) by deleting the words “prior to the registration of such prospectus” in subsection (10)(a);

- (p) by deleting the words “prior to the registration of such profile statement” in subsection (10)(b);
- (q) by deleting paragraph (b) of subsection (11);
- (r) by deleting the words “the person who lodges the prospectus or profile statement and, where applicable, the translation” in the 7th to 9th lines of subsection (12) and substituting the words “the person making the offer”;
- (s) by deleting the words “a copy of any prospectus” in subsection (13) and substituting the words “a prospectus”;
- (t) by deleting paragraph (c) of subsection (13) and substituting the following paragraph:
 - “(c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (4A);”;
- (u) by deleting paragraph (e) of subsection (13) and the following paragraphs substituted therefor:
 - “(e) any written consent of an expert required by section 249 to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (ea) any written consent of an issue manager required by section 249A(1) to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (eb) any written consent of an underwriter required by section 249A(2) to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority; or”;
- (v) by deleting the words “a copy of any profile statement” in subsection (14) and substituting the words “a profile statement”;
- (w) by deleting paragraph (c) of subsection (14) and the following paragraph substituted therefor:
 - “(c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (4A);”;
- (x) by deleting subsection (15) and substituting the following subsection:
 - “(15) The Authority shall not refuse to register a prospectus under subsection (13) or a profile statement under subsection (14) without giving the person making the offer 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 person making the offer (being an entity) or the issuer is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
 - (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
 - (c) 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 person making the offer (being an entity) or the issuer.”;
- (y) by deleting subsections (16) and (17) and the following subsections substituted therefor:

“(16) Any person making the offer who is aggrieved by the refusal of the Authority to register a prospectus or profile statement to which his offer relates under subsection (13) or (14) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision is final.

(17) If –

- (a) a prospectus or profile statement is issued, circulated or distributed without it having been registered by the Authority; or
- (b) an application to subscribe for or purchase securities is accepted, or securities are allotted, issued or sold, without a prospectus and profile statement, where applicable, in respect of the securities having been registered by the Authority,

the person making the offer and every person who is knowingly a party to—

- (i) the issue, circulation or distribution of the prospectus or profile statement,
- (ii) the acceptance of the application to subscribe for or purchase the securities; or
- (iii) the allotment, issue or sale of the securities,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 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 \$15,000 for every day thereof during which the offence continues after conviction.”; and

(za) by deleting subsections (18) and (19) and substituting the following subsection:

“(18) This section is subject to section 240A.”.

New section 240A

30. The principal Act is amended by inserting, immediately after section 240, the following section:

“Debenture issuance programme

240A.-(1) A prospectus for every offer of debentures or units of debentures that is part of a debenture issuance programme shall comprise

(a) a base prospectus applicable to every offer under the debenture issuance programme; and

(b) a pricing statement applicable to that particular offer.

(2) In respect of an offer referred to in subsection (1), the requirements of section 240(1)(a)(ii) and (iii) are satisfied if a copy of the base prospectus and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with the Authority and registered by the Authority, either separately on the same date or different dates or as a single document.

(3) For the avoidance of doubt, where the base prospectus in relation to a debenture issuance programme has been lodged with and registered by the Authority, it shall be treated as having been lodged with and registered by the Authority in respect of every offer under that programme.

(4) For the purposes of the application of the provisions of this Sub-division to an offer referred to in subsection (1)--

(a) references to a prospectus in sections 240(9A), (10)(a), (11), (11A), (12), (13), (15), (16), (17), 241 (other than section 241(6) and (6B)) and 249 shall be read as references to the base prospectus or the pricing statement, as the case may be;

(b) references to a prospectus in section 240(8) and (8A) shall be read as references to the base prospectus;

(c) references to a supplementary document and a supplementary prospectus shall be read as references to a supplementary base prospectus or pricing statement, as the case may be; and

(d) references to a replacement document and a replacement prospectus shall be read as references to a replacement base prospectus or pricing statement, as the case may be.

(5) For the avoidance of doubt, the pricing statement may be registered at any time by the Authority after its lodgment with the Authority.”.

Amendment of section 241

31. Section 241 of the principal Act is amended —

(a) by deleting the words “close of the offer or invitation, the person making the offer or invitation to the public to subscribe for or purchase shares, debentures, or units of shares or debentures” in 2nd, 3rd and 4th lines of subsection (1) and substituting the words “close of the offer of securities, the person making that offer”;

(b) by inserting, immediately after subsection (1), the following subsections:

“(1A) If, after a base prospectus referred to in section 240A or a profile statement in respect of a debenture issuance programme referred to in that section is registered but before the expiration of 12 months from the registration of the prospectus by the Authority, the person making that offer intends to update any information or include any new information in the base prospectus or profile statement, the person may lodge a supplementary or replacement document with the Authority, provided that no offer to which the base prospectus or profile statement relates is subsisting at the time of the lodgment.

(1B) Subsections (7) to (16) shall not apply to a supplementary or replacement document which is lodged pursuant to subsection (1A).”;

(c) by deleting subsection (5) and substituting the following subsection therefor:

“(5) The person making the offer shall take reasonable steps to –

(a) inform potential investors of the lodgment of any supplementary or replacement document under subsection (1); and

(b) make available to them the supplementary document or replacement document.”;

(d) by deleting subsection (6A);

(e) by deleting the words “or invitation” in subsection (7);

(f) by deleting subsection (8) and substituting the following subsection therefor:

“(8) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for securities, then –

(a) where the securities have not been issued to the applicants, the person making the offer shall –

- (i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications;
 - (ii) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or
 - (iii) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled, and the person making the offer shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or
- (b) where the securities have been issued to the applicants, the person making the offer shall –
- (i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in;
 - (ii) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in; or
 - (iii) treat the issue of the securities as void, in which case the issue shall be deemed void and the person making the offer shall, within 7 days from the date

of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities.”;

- (g) by deleting the words “subsection(8)(a)(i)” in subsection (10) and substituting the words “subsection (8)(a)(i) or (ii)”;
- (h) by deleting the words “whereupon the corporation shall, within 7 days from the receipt of such notification, pay to him all moneys paid by him on account of his application for the shares, debentures or units of shares or debentures” in subsection (10) and substituting the words “whereupon the person making the offer shall, within 7 days from the receipt of such notification, pay to him all moneys paid by him on account of his application for the securities”;
- (i) by deleting subsection (11) and substituting the following subsection therefor:

“(11) An applicant who wishes to exercise his option under subsection (8)(b)(i) or (ii) to return securities issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to be evidence of title to those securities to the person making the offer, whereupon the person making the offer shall, within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for the securities and the issue of those securities shall be deemed to be void.”; and

- (j) by deleting subsections (12), (13) and (14) and substituting the following subsections therefor:

“(12) Where prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase securities then –

- (a) where the securities have not been transferred to the applicants, the person making the offer shall –

- (i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications;

- (ii) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or

replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or

- (iii) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled, and the person making the offer shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or

(b) where the securities have been transferred to the applicants, the person making the offer shall –

- (i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in;
- (ii) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in; or
- (iii) treat the sale of the securities as void, in which case the sale shall be deemed void and the person making the offer shall -

- (A) if documents purporting to evidence title have been issued to the applicants –

- (ZA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return such documents to the person making the offer within 14 days from that date; and

(ZB) within 7 days from the date of the receipt of those documents or the date of the lodgment of the supplementary document or replacement document, whichever is later, pay to the applicants all moneys paid by them for the securities; or

(B) if no such documents have been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document pay to the applicants all moneys paid by them for the securities.

(13) An applicant who wishes to exercise his option under subsection (12)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this whereupon the person making the offer shall, within 7 days of the receipt of such notification, pay to him all moneys paid by him on account of his application for the securities.

(14) An applicant who wishes to exercise his option under subsection (12)(b)(i) or (ii) to return securities sold to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to evidence title to those securities to the person making the offer, whereupon the person making the offer shall within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for the securities and the sale of the securities shall be deemed to be void.”.

Amendment of section 242

32. Section 242 of the principal Act is amended -

- (a) by deleting the words “person who lodged the prospectus direct that no or no further shares or debentures, or units of shares or debentures” in the 12th, 13th and 14th lines of subsection (1) and substituting the words “person making the offer direct that no or no further securities”;
- (b) by deleting the words “person who lodged the profile statement, direct that no or no further shares or debentures, or units of shares or debentures” in the 14th, 15th and 16th lines of subsection (2) and substituting the words “person making the offer direct that no or no further securities”;

- (c) by deleting the words “the shares or debentures or units of shares or debentures” in subsection (3) and substituting the words “the securities”;
- (d) by deleting the words “person who lodged the prospectus or profile statement” in the 2nd and 3rd lines of subsection (4) and substituting the words “person making the offer”;
- (e) by deleting paragraph (a) of subsection (4) and substituting the following paragraphs therefor:
 - “(a) the person making the offer (being an entity) or the issuer is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
 - (aa) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere.”;
- (f) by deleting the word “corporation” in subsection (4)(b), and substituting the words “the person making the offer (being an entity) or the issuer”;
- (g) by deleting subsection (5) and the following subsection substituted therefor:
 - “(5) Where applications to subscribe for securities to which the prospectus or profile statement relates have been made prior to the stop order, and –
 - (a) where the securities have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or
 - (b) where the securities have been issued to the applicants, the issue of the securities shall be deemed to be void and the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities.”;
- (h) by deleting subsection (7) and the following subsection substituted therefor:
 - “(7) Where applications to purchase securities to which the prospectus or profile statement relates have been made prior to the stop order, then –
 - (a) where the securities have not been transferred to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the person making the offer shall, within 14 days from the date of the stop order, pay to

the applicants all moneys the applicants have paid on account of their applications for the securities; or

- (b) where the securities have been transferred to the applicants, the sale shall be deemed to be void and the person making the offer shall -
 - (i) if documents purporting to evidence title have been issued to the applicants -
 - (A) within 7 days from the date of the stop order, inform all applicants to return such documents to the person making the offer within 14 days from that date; and
 - (B) within 7 days from the date of the receipt of those documents or the date of the stop order, whichever is later, pay to the applicants all moneys paid by them for the securities; or
 - (ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities.”; and
- (i) by deleting the words “the person who lodged the prospectus or profile statement directing that no or no further shares in or debentures of, or units of shares or debentures of, a corporation” in the 5th, 6th and 7th lines of subsection (8) and substituting the words “the person making the offer directing that no or no further securities”.

Amendment of section 243

33. Section 243 of the principal Act is amended —

- (a) by deleting the words “an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or for an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation” in subsection (1) and substituting the words “an offer of securities”;
- (b) by deleting subsection (3) and substituting the following subsection:
 - “(3) The matters referred to in subsection (1)(a) shall relate to –
 - (a) the rights and liabilities attaching to the securities;
 - (b) the assets and liabilities, profits and losses, financial position and performance, and prospects of the issuer;

- (c) if the person making the offer is one who controls the underlying entity, the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; and
 - (d) in the case of options over securities, the capacity of the person making the offer to issue or deliver the relevant securities.”;
- (c) by deleting the words “nature of the shares or debentures, or units of the shares or debentures, and the nature of the corporation” in subsection (4)(a) and substituting the words “nature of the securities and the nature of the entity”;
 - (d) by deleting paragraphs (a), (b) and (c) of subsection (5) and substituting the following paragraphs:
 - “(a) the person making the offer;
 - (b) if the person making the offer is an entity, a director or equivalent person of the entity;
 - (c) a director or equivalent person or a proposed director or equivalent person of the issuer;”;
 - (e) by deleting the words “shares in or debentures of, or units of shares in or debentures of, a corporation” in subsection (6) and substituting the word “securities”.

Amendment of section 245

34. Section 245 of the principal Act is amended —

- (a) by deleting the words “A corporation or other entity” in the 1st line of subsection (1) and substituting the words “An entity”;
- (b) by deleting the words “corporation or” in the 3rd line of subsection (1);
- (c) by deleting the words “a corporation or other entity” in the 2nd line of subsection (2) and substituting the words “an entity”;
- (d) by deleting the words “the corporation or entity” wherever they appear in subsection (2)(a) and (b) and substituting the words “the entity”;
- (e) by deleting the words “corporation or other” in subsection (3); and
- (f) by inserting, immediately after the words “contravenes subsection” in subsection (3), the words “(1) or”.

Amendment of section 246

35. Section 246 of the principal Act is amended -

- (a) by deleting the words “offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation” in the 1st to 5th lines of subsection (1) and substituting the words “offer of securities”; and
- (b) by deleting paragraph (a) of subsection (1) and the following paragraph substituted therefor:

“(a) the following particulars:

- (i) identification of the person making the offer and where the person making the offer is not the issuer, the issuer and, where applicable, the underlying entity ;
- (ii) the nature of the securities;
- (iii) the nature of the risks involved in investing in the securities; and
- (iv) details of all amounts payable in respect of the securities (including any amount by way of fee, commission or charge);”.

Amendment of section 248(2)

36. Section 248(2) of the principal Act is amended by inserting, immediately after the words “section 240(1)(a)(ii), (4)(b),”, the words “(4A),”.

Amendment of section 249

37. Section 249 of the principal Act is amended —

- (a) by deleting the words “making an offer of, or inviting subscription for or purchase of, shares in or debentures of, or units of shares in or debentures of, a corporation” in 1st, 2nd and 3rd lines of subsection (1) and substituting the words “or profile statement making an offer of securities”;
- (b) by inserting, immediately after subsection (1), the following subsections:

“(1A) Every person making the offer shall cause a true copy of every written consent referred to in subsection (1) to be deposited within 7 days after registration of the prospectus at the registered

office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(1B) Every issuer shall keep the original copy of every written consent deposited in accordance with subsection (1A), for a period of at least 6 months after the registration of the prospectus, to be made available for inspection by its members and creditors, and persons who have subscribed for or purchased the securities to which the prospectus relates without payment of a fee.”;

- (c) by deleting the word “corporation” in the 2nd line of subsection (2) and substituting the words “person making the offer”; and
- (d) by inserting, immediately after the words “If any prospectus” in subsection (2), the following words “or profile statement”.

New section 249A

38. The principal Act is amended by inserting, immediately after section 249, the following section:

“Consent of issue manager and underwriter to being named in the prospectus

249A (1) A prospectus or profile statement making an offer of securities which names a person as the issue manager to that offer shall not be issued unless -

- (a) that person has given, and has not before delivery of a copy of the prospectus or profile statement for registration withdrawn, his written consent to being named in the prospectus or profile statement as issue manager to that offer ; and
- (b) there appears in the prospectus or profile statement a statement that that person has given and has not withdrawn such consent.

(2) A prospectus or profile statement making an offer of securities which names a person as the underwriter to the offer shall not be issued unless –

- (a) that person has given, and has not before delivery of a copy of the prospectus or profile statement for registration withdrawn, his written consent to being named in the prospectus or profile statement as underwriter to that offer; and
- (b) there appears in the prospectus or profile statement a statement that that person has given and has not withdrawn such consent.

(3) If any prospectus or profile statement is issued in contravention of subsection (1) or (2), the person making the offer and every person who is knowingly a party to the issue thereof 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 12 months 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.

(4) Every person making the offer shall cause a true copy of every written consent referred to in subsection (1) and (2) to be deposited within 7 days after registration of the prospectus or profile statement at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(5) Every issuer shall keep the original copy of every written consent deposited in accordance with subsection (4), for a period of at least 6 months after the registration of the prospectus or profile statement, to be made available for inspection by its members and creditors and persons who have subscribed for or purchased the securities to which the prospectus relates without payment of a fee.”

Amendment of section 250

39. Section 250 of the principal Act is amended —

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

“(1) No person shall make an offer of securities, or allot, issue or sell any securities, and in a case where the person making the offer is a corporation or the securities are those of a corporation or proposed corporation, no officer or promoter of the corporation or proposed corporation shall authorize or permit the offer of the securities, or the allotment, issue or sale of the securities, on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (2).“(2) The period under subsection (1) is--

- (a) in a case where the securities are debentures issued under a debenture issuance programme, 12 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale;
- (b) in any other case, 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.”;

- (b) by deleting the words “or (2)” in subsection (3); and
- (c) by deleting subsection (4) and substituting the following subsection:
 - “(4) An allotment, issue or sale of securities that is made in contravention of subsection (1) shall not, by reason only of that fact, be voidable or void.”.

Amendment of section 251

40. Section 251 of the principal Act is amended -

- (a) by deleting the words “offer or invitation, or intended offer or invitation, of shares in or debentures of, or units of shares in or debentures of, a corporation to the public for subscription or purchase” in 1st, 2nd and 3rd lines of subsection (1) and substituting the words “offer of securities”;
- (b) by deleting the words “or invitation” wherever they appear in paragraphs (a) and (b) of subsection (1);
- (c) by deleting the words “the shares or debentures, or units of shares or debentures” in subsection (1)(b)(ii) and substituting the words “the securities”;
- (d) by deleting paragraphs (a) and (b) of subsection (2) and the following paragraphs substituted therefor:
 - “(a) indirectly refers to an offer or intended offer of securities; or
 - (b) is reasonably likely to induce persons to subscribe for or purchase securities,”;
- (e) by deleting the word “corporation” wherever it appears in paragraphs (i) and (ii) of subsection (2) and substituting in each case the word “entity”;
- (f) by deleting the words “to persons specified in sections 274 and 275” in the 4th line of subsection (3) and substituting the words “to institutional investors, persons specified in section 275(1) and persons to whom an offer referred to in section 275(1A) is made”;
- (g) by deleting the words “any shares or debentures, or units of shares or debentures,” in subsection (3)(a)(iii) and substituting the words “any securities”;
- (h) by deleting paragraph (b) of subsection (3) and the following paragraph substituted therefor:
 - “(b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the securities to which the preliminary document relates, or the acceptance of such an offer by any person;”

- (i) by deleting the words “to persons specified in sections 274 and 275” in the 4th line of subsection (4) and substituting the words “to institutional investors, persons specified in section 275(1) and persons to whom an offer referred to in section 275(1A) is made”;
- (j) by inserting, immediately after the words “registered by the Authority” in subsection (5), the words “under section 240”;
- (k) by deleting paragraphs (a), (b) and (c) of subsection (6) and substituting with the following paragraphs:
 - “(a) a statement that identifies the person making the offer or intended offer, and the securities;
 - (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
 - (c) a statement that anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus or profile statement;”
- (l) by deleting subsection (8) and substituting the following subsection:

“(8) After a prospectus or profile statement is registered with the Authority, an advertisement or publication does not contravene subsection (1) if—

 - (a) it includes a statement that the prospectus or profile statement in respect of the offer of securities is available for collection at the times and places specified in the statement;
 - (b) it includes a statement that anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus or profile statement; and
 - (c) it does not contain any information that is not included in the prospectus or profile statement.”;
- (m) by deleting subsection (9) and the following subsection substituted therefor:

“(9) An advertisement or publication does not contravene subsection (1) if it –

 - (a) consists solely of—
 - (i) a notice or report to a securities exchange, futures exchange or recognized securities exchange; or
 - (ii) a disclosure or publication required under this Act or any listing rules of such securities exchange, futures exchange or recognized securities exchange,

made by any person, about its affairs;

- (b) consists solely of a notice or report of a general meeting of the person making the offer, the issuer, the underlying entity or any corporation;
- (c) consists solely of a report about the issuer or the underlying entity that is published by the person making the offer, the issuer or the underlying entity, and -
 - (i) does not contain information that materially affects the affairs of the issuer or underlying entity other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a report referred to in paragraph (a) or (b); and
 - (ii) does not refer (directly or indirectly) to the offer;
- (d) is a news report or a genuine comment, in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to-
 - (i) a prospectus or a profile statement that has been lodged with the Authority or information contained in such a prospectus or a profile statement; or
 - (ii) a notice or report referred to in paragraph (a), (b) or (c);
- (e) is a report about the securities which are the subject of the offer, published by someone who is not -
 - (i) the person making the offer, the issuer or the underlying entity;
 - (ii) a director of the person making the offer, the issuer or the underlying entity;
 - (iii) a person who has an interest in the success of the issue or sale of the securities; or
 - (iv) acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);
- (f) is a report on the securities which are the subject of the offer, published and delivered to any institutional investor not later than 14 days prior to the date of lodgment of the prospectus, provided that—
 - (i) the offer is made in one or more other countries;

- (iii) the publication and delivery of such report in that other country or any one of those other countries do not infringe any law, code or other requirement of that country; and
 - (iii) the report and the manner of its publication and delivery in Singapore comply with such other requirements as may be prescribed by the Authority.
- (g) is a publication made by the person making the offer, the issuer or the underlying entity solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in a publication referred to in paragraph (d) or a publication (which is not an advertisement) referred to in subsection (10), provided that the publication does not contain any information that is not included in the prospectus.”; and
- (n) by deleting the words “and, in the case of a corporation, every officer or other person, who knowingly authorized or permitted the publication or dissemination,” in subsection (12) and substituting the words “and any person who knowingly authorized or permitted the publication or dissemination in contravention of subsection (1), ”.

Amendment of section 252

41. Section 252(1) of the principal Act is amended by deleting the words “offer of shares, debentures, or units of shares or debentures, for subscription or purchase, or the invitation to subscribe for or purchase shares, debentures, or units of shares or debentures, as soon as practicable, if he becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer or invitation” and substituting the words “offer of securities, as soon as practicable, if he becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer”.

Amendment of section 253

42. Section 253 of the principal Act is amended -

- (a) by deleting the words “offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation is made in or is accompanied by a prospectus or profile statement” in the 1st to 6th lines of subsection (1) and substituting the words “offer of securities is made in or is

accompanied by a prospectus or profile statement or, in the case of an offer referred to in section 280, a prospectus or profile statement is prepared and issued in relation to the offer”;

- (b) by deleting the words “the shares or debentures, or units of shares or debentures” in subsection (1)(a)(ii) and substituting the words “the securities”;
- (c) by deleting paragraphs (a), (b), (c), (d), (e) and (f) of subsection (4) and the following paragraphs substituted therefor:
 - “(a) the person making the offer;
 - (b) if the offer is made by an entity, each director or equivalent person of the entity;
 - (c) if the offer is made by an entity, a person named in the prospectus or the profile statement, with his consent, as a proposed director or equivalent person of the entity;
 - (d) an issue manager to the offer of the securities, named in the prospectus or the profile statement with his consent if –
 - (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
 - (ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or
 - (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;
 - (e) an underwriter (but not a sub-underwriter) to the offer of the securities named in the prospectus or the profile statement with his consent if –
 - (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
 - (ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or
 - (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;

- (f) a person named in the prospectus or the profile statement with his consent as having made -
 - (i) the statement that is false or misleading, if he intentionally or recklessly makes that statement; or
 - (ii) a statement on which the false or misleading statement is based, if he knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw his consent
 but only in respect of the inclusion of the statement;
 - (g) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.”;
- (d) by inserting, immediately after subsection (4), the following subsection:
- “(4A) For the purposes of this subsection and subsection (4)—
- (a) remedial action includes any the following:
 - (i) prevent the statement from being included or to have the information or circumstance included in the prospectus or profile statement, as the case may be;
 - (ii) procure the lodgment of a supplementary or replacement prospectus under section 241; and
 - (b) a situation where a person will be regarded as reckless as to the matter referred to in subsection (4)(d)(iii) or (e)(iii) includes a situation where, having been put upon inquiry that the statement to be or which has been included in the prospectus or profile statement is likely to be false or misleading, or that the information or circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, the person fails to—
 - (i) make all inquiries as are reasonable in the circumstances to verify this; and
 - (ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted by the outcome of the inquiries.”
- (d) by deleting subsection (5).

Amendment of section 254

43. Section 254 of the principal Act is amended -

- (a) by deleting the words “offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation is made in or accompanied by a prospectus or profile statement” in the 1st to 6th lines of subsection (1) and substituting the words “offer of securities is made in or accompanied by a prospectus or profile statement or, in the case of an offer referred to in section 280, a prospectus or profile statement is prepared and issued in relation to the offer”;
- (b) by deleting the words “the shares or debentures, or units of shares or debentures” in subsection (1)(a)(ii) and substituting the words “the securities”;
- (c) by deleting paragraphs (a) to (d) of subsection (3) and substituting the following paragraphs:
 - “(a) the person making the offer;
 - (b) if the offer is made by an entity, each director or equivalent person of the entity;
 - (c) if the offer is made by an entity, a person named in the prospectus or the profile statement, with his consent, as a proposed director or equivalent person of the entity;
 - (d) an issue manager to the issue or sale of the securities;
 - (e) an underwriter (but not a sub-underwriter) to the issue or sale of the securities, named in the prospectus or the profile statement with his consent;”;
- (d) by deleting the words “shares, debentures or units of shares or debentures as a result of an offer or invitation” in subsection (4) and substituting the words “securities as a result of an offer”.

Amendment of section 255

44. Section 255 of the principal Act is amended -

- (a) by inserting, immediately after the words “A person” in the 1st line of subsection (1), the words “referred to in section 253(4)(a), (b) or (c) or 254(3)”;
- (b) by inserting, immediately after the words “A person” in the 1st line of subsection (2), the words “referred to in section 253(4)(a), (b) or (c) or 254(3)”;

(c) by deleting paragraph (a) of subsection (3) and the following paragraph substituted therefor:

“(a) if the person is an entity, someone other than a director, employee or agent of the entity;”; and

(d) by deleting paragraph (a) of subsection (5) and the following paragraphs substituted therefor:

“(a) a proposed director or equivalent person of the issuer;

(aa) an issue manager or underwriter;”.

Repeal of section 256

45. Sections 256 of the principal Act is repealed.

Amendment of section 257

46. Section 257 of the principal Act is amended -

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

“(1) Subsection (2) applies where an entity allots or agrees to allot to any person any securities of the entity with a view to all or any of them being offered for sale to another person, being an offer that does not qualify for an exemption under Subdivision 4 of this Division (other than section 280).”;

(b) by deleting the words “to the public” in the 1st line of subsection (2);

(c) by deleting the word “corporation” in the 3rd line of subsection (2) and substituting the word “entity”;

(d) by deleting paragraphs (a) and (b) of subsection (2) and substituting the following paragraphs:

“(a) an offer of the securities has been made; and

(b) persons accepting the offer in respect of any securities were subscribers therefor;”;

(e) by deleting the words “the persons by whom the offer is made” in the 12th and 13th lines of subsection (2) and substituting the words “the persons making the offer”;

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

“(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale if it is shown –

- (a) that an offer of the securities or of any of them for sale was made within 6 months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the entity in respect of the securities had not been so received.”;
- (g) by deleting the words “directors of a corporation” in subsection (4) and substituting the words “directors or equivalent persons of an entity;
- (h) by deleting paragraphs (a) and (b) of subsection (5) and the following paragraphs substituted therefor:
 - “(a) the net amount of the consideration received or to be received by the entity in respect of the securities to which the offer relates; and
 - (b) the place and time at which a copy of the contract under which the securities have been or are to be allotted may be inspected.”;
- (i) by deleting subsection (6); and
- (j) by deleting the words “shares or debentures” in the section heading and substituting the word “securities”.

Repeal and re-enactment of section 258

47. Section 258 of the principal Act is repealed and the following section substituted therefor:

“Application and moneys to be held in trust in separate bank account until allotment

258.-(1) All application and other moneys paid prior to allotment by any applicant on account of securities offered to him shall, until the allotment of the securities, be held by the person making the offer of the securities upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those securities.

(2) There shall be no obligation or duty on any bank with whom any such moneys have been deposited to enquire into or see to the proper application of those moneys so long as the bank acts in good faith.

(3) Any person who contravenes 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 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 259

48. Section 259 of the principal Act is amended -

- (a) by deleting the words “shares or debentures, or units of shares or debentures” wherever they appear in subsection (1) and substituting the word “securities”;
- (b) by deleting the word “corporation” wherever it appears in subsection (2) and substituting the word “person making the offer”;
- (c) by inserting, immediately after the words “the directors” in 7th line of subsection (2), the words “or equivalent persons”;
- (d) by deleting the words “any shares in or debentures of, or units of shares in or debentures of, a corporation” in the 1st and 2nd lines of subsection (3) and substituting the words “any securities of an entity”;
- (e) by deleting the words “the corporation made before any share or debenture, or unit of share or debenture, is purported to be allotted, exempt the allotment of the shares or debentures, or units of shares or debentures,” in subsection (3) and substituting the words “the entity made before any of the securities are purported to be allotted, exempt the allotment of the securities”;
- (f) by inserting, immediately after the words “A director” in subsection (4), the words “or equivalent person”;
- (g) by deleting the words “shares or debentures, or units of shares or debentures,” in subsection (5) and substituting the words “securities”;
- (h) by deleting paragraphs (a) and (b) of subsection (6) and the following paragraphs substituted therefor:
 - “(a) in relation to any securities agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and
 - (b) in relation to a prospectus offering securities for sale as if a reference to sale were substituted for a reference to allotment.
- (i) by deleting the word “corporation” in subsection (7) and substituting the word “the person making the offer”;
- (j) by deleting subsection (8) and substituting the following subsection therefor:
 - “(8) Any person who contravenes subsection (7) 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

12 months 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.”;

- (k) by inserting, immediately after the word “directors” in subsection (9), the words “or equivalent persons”;
- (l) by inserting, immediately after the words “each director” in subsection (10), the words “or equivalent person”;
- (m) by deleting the words “shares in or debentures of, or units of shares in or debentures of, a corporation” in the 2nd and 3rd lines of subsection (11) and substituting the words “securities of an entity”;
- (n) by deleting the words “shares or debentures, or units of shares of debentures,” in subsection (11)(a) and substituting the word “securities”;
- (o) by deleting the words “shares or debentures, or units of shares or debentures” in subsection (11)(b) and substituting the word “securities”;
- (p) by deleting the words “memorandum and articles of the corporation” in the 2nd line of subsection (13) and substituting the words “memorandum and articles or other constituent document of the issuer”;
- (q) by deleting the words “shares or debentures, or units of shares or debentures,” in the 7th line of subsection (13) and substituting the words “securities”; and
- (r) by deleting the words “shares and debentures” in the section heading and substituting the word “securities”.

Amendment of section 260

49. Section 260 of the principal Act is amended -

- (a) by deleting the words “shares or debentures, or units of shares or debentures of a company offered to the public” in the 1st and 2nd lines of subsection (1) and substituting the words “securities of a company”;
- (b) by deleting the words “shares or debentures, or units of shares or debentures” in subsection (1)(b) and substituting the word “securities”;
- (c) by deleting paragraph (a) of subsection (2) and the following paragraph substituted therefor:
 - “(a) be calculated based on the price at which each security is offered or will be offered; and”

- (d) by deleting subsection (3) and substituting the following subsection therefor:

“(3) The amount payable on application on each security offered shall not be less than 5% of the price at which each security is offered or will be offered.”; and

- (e) by deleting the words “shares or debentures, or units of shares or debentures,” in subsections (4) and (9) and substituting the words “securities”.

Amendment of section 261

50. Section 261 of the principal Act is amended —

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

“(1) Subject to subsection (1A), this Subdivision shall apply where an entity makes an offer of debentures.

(1A) Sections 268, 269 and 270 shall not apply if the borrowing entity is a prescribed entity.”;

- (b) by deleting the words “prescribed corporation” wherever they appear in subsection (1B) and substituting the words “prescribed entity”;
- (c) by deleting the words “corporation or other entity or any corporation or other” in subsection (1B)(b) and substituting the words “entity or any”; and
- (d) by deleting subsection (2).

New section 262

51. The principal Act is amended by inserting, immediately after section 261, the following section —

“Offer of asset-backed securities

262.-(1) An offer of asset-backed debentures shall be made only by the special purpose vehicle under the securitisation transaction to which the debentures relate.

(2) The special purpose vehicle making the offer shall not engage in any activities other than those that are for the purposes of or incidental to the offer or the securitisation transaction.

(3) In this section —

“asset-backed debentures” means debentures or units of debentures issued pursuant to a securitisation transaction;

“securitisation transaction” means an arrangement that involves the transfer or assignment of assets to a corporation where –

- (a) such transfer is funded by the issue of debentures or units of debentures not being debentures or units of debentures that are directly secured, in whole or in part, by fixed assets; and
- (b) payments in respect of such debentures or units of debentures are principally derived, directly or indirectly, from the cash flows generated by the assets; and

“special purpose vehicle” means the corporation to which assets are transferred or assigned under a securitisation transaction.”.

Amendment of section 265

52. Section 265 of the principal Act is amended by deleting the words “borrowing corporation” wherever they appear in the section and substituting the words “borrowing entity”.

Amendment of section 266

53. Section 266 of the principal Act is amended -

- (a) by deleting the words “borrowing corporation” wherever they appear in the section and substituting the words “borrowing entity”;
- (b) by deleting the word “corporation” wherever it appears in paragraph (a) of subsection (3) and substituting in each case the word “entity”; and
- (c) by deleting the words “offer or invitation in respect of the debentures was made to the public” in subsection (7) and substituting the words “offer of the debentures was made”.

Amendment of section 268

54. Section 268 of the principal Act is amended —

- (a) by deleting the words “borrowing corporation” wherever they appear in the section and substituting in each case the words “borrowing entity”;
- (b) by deleting the word “corporation” wherever they appear in subsections (2)(a), (4)(a), (6)(a) and (13) and substituting in each case the word “entity”; and
- (c) by deleting the words “borrowing corporation” in the section heading and substituting the words “borrowing entity”.

Amendment of section 269

55. Section 269(1) of the principal Act is amended by deleting the words “borrowing corporation” wherever they appear in that subsection and substituting the words “borrowing entity”.

Amendment of section 270

56. Section 270 of the principal Act is amended —

- (a) by deleting the words “borrowing corporation” wherever they appear in the section and substituting the words “borrowing entity”;
- (b) by deleting the words “or invitation in respect” in the 2nd line of subsection (1);
- (c) by deleting the word “invitation” in the 4th line of subsection (1) and substituting the word “offer”; and
- (d) by deleting the word “invitation” in the 5th line of subsection (5) and substituting the word “offer”.

Repeal and re-enactment of section 272

57. Section 272 of the principal Act is repealed and the following section substituted therefor:

“Issue or transfer of securities for no consideration

272.-(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities (other than an offer of an option to subscribe for or purchase securities) if no consideration is or will be given for the issue or transfer of the securities.

(2) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of an option to subscribe for or purchase securities if—

- (a) no consideration is or will be given for the issue or transfer of the option; and
- (b) no consideration is or will be given for the underlying securities on the exercise of the option.”.

New sections 272A and 272B

58. The principal Act is amended by inserting, immediately after section 272, the following sections:

“Small offers

272A.-(1) “(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to personal offers of securities of an entity by a person if—

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed -
 - (i) \$5 million (or its equivalent in a foreign currency); or
 - (ii) such other amount as the Authority may, by order published in the Gazette, specify in substitution for the amount specified in sub-paragraph (i);
- (b) the person making the offer notifies every person to whom he makes the offer that -
 - (i) the offer is made in reliance on the exemption in this subsection; and
 - (ii) the securities being offered shall not be subsequently sold to any person other than persons specified in subsection (7)(a) within 6 months from the date the securities were acquired in reliance on the exemption, unless such subsequent offer is made in compliance with Subdivisions (2) and (3) of this Division.

(1A) For the purposes of subsection (1)(b), the person making the offer is deemed to have notified every person to whom he makes the offer if such notification is contained on the first page of any notice, circular, material, advertisement, publication or other document issued in connection with the offer.

- (2) In subsection (1), a personal offer of securities is one that—
 - (a) may only be accepted by the person to whom it is made; and
 - (b) is made to a person who is likely to be interested in that offer, having regard to--
 - (i) previous contact between the person making the offer and that person;
 - (ii) some professional or other connection between the person making the offer and that person; or
 - (iii) statements or actions by that person that indicate that he is interested in offers of that kind.

(3) In determining the amount raised by an offer, the following shall be included:

- (a) the amount payable for the securities at the time when they are issued;
- (b) if the securities are shares issued partly-paid, any amount payable at a future time if a call is made;
- (c) if the security is an option, any amount payable on the exercise of the option; and
- (d) if the securities carry a right to convert the securities into other securities, any amount payable on the exercise of that right.

(4) In determining whether the amount raised by an offer does not exceed the applicable amount specified in subsection (1)(a), any amount raised by the person making the offer by a previous offer of securities issued by the same entity shall be included if the second-mentioned offer –

- (a) was made within the period of 12 months ending with the date on which the first-mentioned offer is made; and
- (b) is one to which Subdivisions (2) and (3) of this Division (other than section 257) do not apply but only by virtue of this section.

(5) For purposes of this section, the Authority may determine in writing that an individual, an entity or a trust is closely related to the person making the offer of securities in reliance on the exemption in subsection (1) (referred to in this subsection as the exempt offer), in which case, any amount raised from -

- (a) a previous offer of securities made by such individual, entity or trust; or
- (b) a previous offer of securities or interests in such entity or trust made by the person making the offer,

shall be included in determining whether the exempt offer exceeds the applicable amount specified in subsection (1)(a) if such previous offer –

- (i) was made within the period of 12 months ending with the date on which the exempt offer is made; and
- (ii) is one to which Subdivisions (2) and (3) of this Division (other than section 257) do not apply but only by virtue of this section.

(6) For the purpose of subsection (5) –

- (a) “interest”, in relation to a unit in a trust, means any right or interest, whether legal or equitable, in the unit of the trust, by whatever name called, and includes any option to acquire any such right or interest in the unit of the trust; and
- (b) “unit”, in relation to a trust, means a right or financial stake of a unitholder in the trust; and

- (c) “unitholder” means a person who holds units in a trust (whether as a contributor to the trust or as a person who acquired such units from another person who is or was a unitholder in the trust).

(7) For the purpose of this section, an offer of securities made by a person acting as an agent of another person shall be treated as an offer made by that other person.

(8) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer by any person to sell any securities acquired from an offer made in reliance on the exemption in subsection (1) (referred to in this subsection as an initial offer) to any other person if and only if —

- (a) the offer is one—
 - (i) that may only be accepted by the person to whom it is made; and
 - (ii) that is made -
 - (A) to a person who is likely to be interested in the offer having regard to—
 - (ZA) previous contact before the date of the offer between the person making the initial offer and that person;
 - (ZB) some professional or other connection established before that date between the person making the initial offer and that person;
 - (ZC) statements or actions made before that date by that person that indicate that he is interested in offers of that kind; or
 - (B) in reliance on an exemption under section 272, 274 or 275;
- (b) the offer is made within 6 months from the date on which the securities were initially acquired in reliance on the exemption in subsection (1); and
- (c) the first-mentioned person provides a notification in accordance with paragraph (b) of subsection 1, and the reference in that paragraph to the date shall refer to the date the securities were acquired under the initial offer.

Private placement

272B.-(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to offers of securities of an entity that are made by a person to no more than –

- (a) 20 persons; or

- (b) such other number of persons as the Authority may, by order published in the *Gazette*, specify in substitution for the number specified in sub-paragraph (a).

(2) In determining whether an offer of securities is made to no more than the applicable number of persons specified in subsection (1), persons (other than those to whom the first-mentioned offer is made) to whom any other offer of securities of the same entity made by the same person shall be included if the second-mentioned offer –

- (a) was made within the period of 12 months ending with the date on which the first-mentioned offer is made; and
- (b) is one to which Subdivisions (2) and (3) of this Division (other than section 257) do not apply but only by virtue of this section.

(3) For purposes of this section, the Authority may determine in writing that an individual, an entity or a trust is closely related to the person making the offer of securities in reliance on the exemption in subsection (1) (referred to in this subsection as the exempt offer), in which case, the persons to whom -

- (a) a previous offer of securities made by such individual, entity or trust; or
- (b) a previous offer of securities or interests in such entity or trust made by the person making the offer;

shall be included in determining whether the exempt offer is made to no more than the applicable number of persons specified in subsection (1) if such previous offer –

- (i) was made within the period of 12 months ending with the date on which the exempt offer is made; and
- (ii) is one to which Subdivisions (2) and (3) of this Division (other than section 257) do not apply but only by virtue of this section.

(4) For the purpose of subsection (3) –

- (a) “interest”, in relation to a unit in a trust, means any right or interest, whether legal or equitable, in the unit of the trust, by whatever name called, and includes any option to acquire any such right or interest in the unit of the trust; and
- (b) “unit”, in relation to a trust, means a right or financial stake of a unitholder in the trust; and
- (c) “unitholder” means a person who holds units in a trust (whether as a contributor to the trust or as a person who

acquired such units from another person who is or was a unitholder in the trust).

(5) For the purposes of sub-section (1) –

- (a) an offer of securities to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the securities which are the subject of the offer;
- (b) an offer of securities to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the securities which are the subject of the offer;
- (c) an offer of securities to 2 or more persons who will own the securities acquired as joint owners shall be treated as an offer to a single person;
- (d) offers of securities made by a person as an agent of another person shall be treated as offers made by that other person; and
- (e) where—
 - (i) an offer of securities is made to a person in reliance on the exemption under subsection (1) with a view to those securities being subsequently offered for sale to another person; and
 - (ii) that subsequent offer -
 - (A) is not made in reliance on an exemption under any provision of this Subdivision; or
 - (B) is made in reliance on an exemption under section 280 or subsection (1),

both persons shall be included for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons specified in that subsection.

(6) For the purposes of subsection (5)(e), an offer of securities shall, unless the contrary is proved, be deemed to have been made with a view to them being subsequently offered for sale to another person if it is shown that –

- (a) the subsequent offer is made within 6 months after the securities were acquired under the initial offer; or

- (b) at the date of the making of the subsequent offer, the whole consideration to be received by the person making the initial offer in respect of the securities had not been so received.

Amendment of section 273

59. Section 273 of the principal Act is amended —

- (a) by inserting, immediately after the words “this Division” in subsection (1), the words “(other than section 257)”;
- (b) by deleting the words “offer or invitation in respect of shares, debentures or units of shares or debentures,” in the 2nd and 3rd lines of subsection (1) and substituting the words “an offer of securities”;
- (c) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:

“(b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation –

- (i) to all members of the corporation or all members of the corporation holding shares of that class; or
- (ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs of the country in which the corporation was incorporated;”;

- (d) by deleting the words “a corporation” wherever they appear in paragraph (c)(i) and (ii) of subsection (1) and substituting the words “an unlisted corporation”;
- (e) by inserting, immediately after paragraph (c) of subsection (1), the following paragraphs:

“(ca) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some of all of the shares of a particular class in a corporation –

- (i) to all members of that corporation or all members of the corporation holding shares of that class; or
- (ii) where the person already holds shares in the corporation, to all other members of the corporation

or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code is applicable to it;

(*cb*) it is made in connection with a proposed compromise or arrangement between –

- (i) an unlisted corporation and its creditors or a class of them; or
- (ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code is applicable to it;

(*cc*) it is an offer to enter into an underwriting agreement relating to securities;

(*cd*) it is an offer of securities of a corporation --

- (i) made to existing members or debenture holders of that corporation (whether or not it is renounceable in favour of persons other than existing members or debenture holders); and
- (ii) that is not an offer described in section 277A(1)(a);

(*ce*) it is an offer of securities of a company made to existing members of that company under section 306 of the Companies Act (Cap. 50);”;

(*f*) by deleting the words “or invitation in respect” wherever they appear in subsection (1)(*d*) and (*e*);

(*g*) by deleting paragraph (*f*) of subsection (1) and the following paragraph substituted therefor:

“(f) it is made (whether or not in relation to securities that have been previously issued) by a corporation to a qualifying person where the securities are to be held by or for the benefit of the qualifying person and are the securities of the corporation or any of its related corporation.”;

(*h*) by deleting the word “share” in 2 line of subsection (2);

(*i*) by deleting subsection (3);

(*j*) by deleting the words “and (3)” in subsection (4);

(*k*) by deleting subsection (5) and substituting the following subsection:

“(5) 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 of securities 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 of securities,

Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to a person making such an offer for a period of 6 months from the date of the declaration.”;

- (l) by deleting the words ““corporation” excludes” in the 1st line of subsection (9) and substituting the words ““unlisted corporation” means a corporation other than”;
- (m) by deleting the words “shares or debentures, or units of shares or debentures,” in subsection (9)(b) and substituting the words “securities”; and
- (n) by inserting, immediately after subsection (9), the following subsection:

“(10) In subsection (1)(ca) and (cb), “corporation” means a corporation other than a company.”.

Repeal and re-enactment of section 274

60. Section 274 of the principal Act is repealed and the following section substituted therefor:

“Offer made to institutional investors

274. Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, whether or not they have been previously issued, made to an institutional investor.”

Amendment section 275

61. Section 275 of the principal Act is amended -

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

“(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, whether or not they have been previously issued-

 - (a) made to an accredited investor;
 - (b) made to a corporation whose sole business is to hold investments and whose entire share capital is owned by 1 or more individuals each of whom is an accredited investor;

- (c) where the person making the offer is not an individual, made to an officer or equivalent person of the person making the offer or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or
- (d) where the person making the offer is an individual, made to a spouse, parent, brother, sister, son or daughter of that person,

if—

- (i) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer; and
- (ii) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.

(1A) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities to a person who acquires the securities as principal, whether or not the securities have been previously issued, if—

- (a) the offer is on terms that the securities may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets,
- (b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer; and
- (c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.”;

(b) by deleting the words “offer or invitation in respect of shares, debentures or units of shares or debentures” in the 7th and 8th lines of the definition of “advertisement” in subsection (2) and substituting the words “offer of securities”;

(c) by deleting the definition of “information memorandum” in subsection (2) and substituting the following definition:

“information memorandum” means a document—

- (a) purporting to describe the business and affairs of—
 - (i) the issuer and, where applicable, the underlying entity;
 - (ii) the person making the offer; or
 - (iii) both; and
- (b) purporting to have been prepared for delivery to and review by investors specified in subsection (1) or to whom an offer referred to in subsection (1A) is made so as to assist them in making an investment decision in respect of the securities which are the subject of the offer.”;
- (d) by deleting the definition of “sophisticated investor” in subsection (2);
- (e) by deleting the words “shares in or debentures of, or units of shares in or debentures of a corporation” in subsection (3) and substituting the words “securities”;
- (f) by deleting the words “paragraph (a) or (b) in the definition of “sophisticated investor” in subsection (2)” in subsection (4) and substituting the words “subsection (1A)(a)”;
- (g) by deleting the section heading and substituting the following section heading therefor:

“Offer made to accredited investors and certain other investors”.

Repeal and re-enactment of section 276

62. Section 276 of the principal Act is repealed and the following section substituted therefor:

“Offer of securities acquired pursuant to section 274 or 275

276.-(1) Where securities initially acquired in reliance on an exemption in section 274 or 275 are sold within the period of 6 months from the date of the initial acquisition to any person other than an institutional investor, a person specified in section 275(1) or a person to whom an offer referred to in section 275(1A) is made, then subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale even if it would otherwise (but for this subsection) have been exempted therefrom by virtue of section 272A, 272B, 273(1)(d) to (i), 277, 277A, 278 or 279.

(2) Where securities initially acquired in reliance on an exemption in section 274 or 275 are sold to any person other than an institutional investor, a person specified in section 275(1) or a person to whom an offer referred to in section 275(1A) is made, then subdivisions (2) and

(3) of this Division (other than section 257) shall not apply to the offer resulting in that sale.

(3) Securities of a corporation—

- (a) whose sole business is to hold investments; and
- (b) whose entire share capital is owned by 1 or more individuals each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any securities in reliance on the exemption under section 275, unless –

- (a) the offer resulting in that transfer is only made to institutional investors, persons specified in section 275(1) or persons to whom an offer referred to in section 275(1A) is made ;
- (b) no consideration is or will be given for the transfer; or
- (c) the transfer is by operation of law.

Amendment of section 277

63. Section 277 of the principal Act is amended —

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

“(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities that is in respect of--

- (a) securities that are, or are to be, uniform in all respects with securities previously issued and listed for quotation on a securities exchange; or
- (b) units of a share or debenture that are, or are to be, uniform in all respects with securities previously issued and listed for quotation on a securities exchange;

where—

- (i) an offer information statement which complies with such form and content as may be prescribed by the Authority is lodged with the Authority and the securities exchange, and
- (ii) the offer is made in or accompanied by the offer information statement referred to in (b).

(1A) Subsection (1) shall apply only for a period of 6 months from the date of lodgment of the offer information statement.

(b) by deleting subsection (3) and substituting the following subsections:

“(3) For the purposes of this section, 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.

(3A) Sections 249, 249A, 253, 254 and 255 shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.”;

- (c) by deleting the words “subsection (3)(b)” in subsection (4) and substituting the words “subsection (3A)”;
- (d) by inserting, immediately after the words “section 249” in subsection (4)(a), the words “or section 249A”;
- (e) by deleting the words “subsection (1)(b)” in subsection (4)(b) and substituting the words “subsection (1)(i)”;
- (f) by deleting the words “subsection (3)(b)” in subsection (5) and substituting the words “subsection (3A)”;
- (g) by inserting, immediately after subsection (5), the following subsection:

“(6) Where the written consent of an issue manager or underwriter to the issue of an offer information statement is required to be given under section 249A (as applied in relation to that statement under subsection (3A)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.”; and
- (h) by deleting the words “or invitation” in the section heading.

New section 277A

64. The principal Act is amended by inserting, immediately after section 277, the following section:

“Renounceable rights issue by a company

277A.-(1) Subject to subsection (2), Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities that have not been previously issued by a company by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that company where—

- (a) an application has been or will be made for permission for the securities to be listed for quotation on any securities exchange;
- (b) an offer information statement which complies with such form and content as may be prescribed by the Authority is lodged with the Authority; and
- (c) the offer is made in or accompanied by the offer information statement referred to in (b).

(2) Subsection (1) shall apply only for a period of 6 months from the date of lodgment of the offer information statement.

(3) The Authority may, on the application of a company affected by this section, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.

(4) Sections 249, 249A, 253, 254 and 255 shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4)--

(a) a reference in section 249 or 249A to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment; and

(b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 shall be read as a reference to any information prescribed under subsection (1)(b).

(6) Where the written consent of an expert to the issue of an offer information statement is required to be given under section 249 (as applied in relation to that statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

(7) Where the written consent of an issue manager or underwriter to the issue of an offer information statement is required to be given under section 249A (as applied in relation to that statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

Amendment of section 278

65. Section 278 of the principal Act is amended -

- (a) by inserting, immediately after the words “this Division” in subsection (1), the words “(other than section 257)”;
- (b) by deleting the words “or invitation in respect” in subsection (1); and
- (c) by deleting the words “or invitation” in the 4th line of subsection (1), in subsection (2)(b) and in the section heading.

Amendment of section 279

66. Section 279 of the principal Act is amended -

- (a) by inserting, immediately after the words “this Division”, the words “(other than section 257)”;
- (b) by deleting the words “or invitation to the public in respect” in 2nd line of the section; and
- (c) by deleting the words “or invitation in respect” in the section heading.

New section 280

67. The principal Act is amended by inserting, immediately after section 279, the following section:

“Offer using ATM and other electronic means

280.-(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of securities using –

- (a) any automated teller machine; or
- (b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 240(1)(a) or, where applicable, section 240(4) that the offer be made in or accompanied by a prospectus or, where applicable, a profile statement, in respect of the offer.

(2) For the avoidance of doubt, a prospectus or, where applicable, a profile statement must still be prepared and issued in respect of the offer referred to in subsection (1) that complies with section 240(1)(a)(i), (ii) and (iii) or (4)(a) to (d), as the case may be.

(3) Subsection (1) applies only if, before enabling the submission of an application to subscribe for or purchase securities, the automated teller machine or prescribed electronic means indicates to the prospective subscriber or buyer –

- (a) how a copy of the prospectus or, where applicable, profile statement in respect of the offer can be obtained; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application.

Amendment of section 282

68. Section 282 of the principal Act is amended by deleting the words “or invitation” in the section and the words “or invitations” in the section heading.

Amendment of section 283

69. Section 283 of the principal Act is amended —

(a) by inserting, immediately before the definition of “profile statement” in subsection (1), the following definitions:

“entity” includes a corporation, an unincorporated association, a partnership and the government of any State;”;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, units in a collective investment scheme to be issued or sold and which contains the information required to be included in a prospectus as may be prescribed under section 296(1)(a)(i) except for such information as may be prescribed by the Authority;”;

(b) by deleting the words “other document inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase,” in the 2nd, 3rd and 4th lines of the definition of “prospectus” in subsection (1) and substituting the words “other document used to make an offer of”;

(c) by deleting the words “, or which complies with such requirements as may be prescribed under section 300(1)” in paragraph (b) of the definition of “prospectus” in subsection (1);

(d) by deleting the definition of “responsible person”; and

(e) by inserting, immediately after subsection (1), the following subsection:

“(1A) For the purposes of this Division, “recognised securities exchange” means a corporation declared by the Authority, by order in the Gazette, as a recognised securities exchange for the purposes of this Division.”;

(f) by deleting subsection (3) and the following subsections substituted therefor:

“(3) For the purposes of this Division, a person makes an offer of units in a collective investment scheme if, and only if, as principal –

(a) he makes (either personally or by an agent) an offer which upon acceptance would give rise to a contract for

the issue or sale of those units by him or another person with whom he has made arrangements for that issue or sale; or

(b) he invites (either personally or by an agent) another person to make an offer which upon acceptance would give rise to a contract for the issue or sale of those units by him or another person with whom he has made arrangements for that issue or sale.

(4) For the purpose of subsection (3), “sale” includes any disposal for valuable consideration.”.

Amendment of section 284A

70. Section 284A of the principal Act is amended —

- (a) by deleting the words “offer to the public of, or an invitation to the public to subscribe for or purchase,” in paragraph (a) and substituting the words “offer of”; and
- (b) by deleting the words “that offer or invitation or a class of offers or invitations to which that offer or invitation belongs” in paragraph (b) and substituting the words “that offer or a class of offers to which that offer belongs”.

Amendment of section 285

71. Section 285 of the principal Act is amended by deleting the words “to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme,” in subsection (1).

Amendment of section 286

72. Section 286 of the principal Act is amended by deleting the subsection (7) and substituting the following subsection:

“(7) The responsible person for a collective investment scheme who is aggrieved by the refusal of the Authority to authorise that scheme under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.”.

Amendment of section 287

73. Section 287 of the principal Act is amended —

- (a) by deleting paragraph (b) of subsection (2);
- (b) by deleting paragraphs (d) and (e) of subsection (2) and the following paragraphs substituted therefor:

“(d) there is a representative for the scheme for the purposes set out in subsection (13) who is –

- (i) an individual resident in Singapore; or
- (ii) a company, or a foreign company registered under Part XI, Division 2 of the Companies Act (Cap. 50);

(e) the Authority has been furnished with information regarding –

- (i) the name of the representative referred to in paragraph (d) and his address (where such representative is a corporation) or contact particulars (where such representative is an individual); and
- (ii) such other information as the Authority may prescribe; and”;

(c) by inserting the word “and” immediately after paragraph (a) of subsection (3);

(d) by deleting the word “; and” at the end of paragraph (b) of subsection (3) and substituting a full stop;

(e) by deleting paragraph (c) of subsection (3); and

(f) by deleting subsection (6) and substituting the following subsection:

“(6) The responsible person for a collective investment scheme who is aggrieved by the refusal of the Authority to recognise that scheme under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.”.

Amendment of section 288

74. Section 288 of the principal Act is amended by deleting subsection (8B) and substituting the following subsection:

“(8B) The responsible person for a collective investment scheme who is aggrieved by –

- (a) the revocation of the authorisation or recognition, as the case may be, of that scheme by the Authority under subsection (1);
- (b) the suspension of the authorisation or recognition, as the case may be, of that scheme by the Authority under subsection (5); or
- (c) the refusal to withdraw the authorisation or recognition, as the case may be, of that scheme by the Authority 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 294

75. Section 294 of the principal Act is amended by inserting, immediately after subsection (1), the following subsection: “(1A) Subsection (1) applies also to the service of any process.”.

Amendment of section 296

76. Section 296 of the principal Act is amended -

- (a) by deleting the words “to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, unless such offer or invitation” in the 2nd, 3rd and 4th lines of subsection (1) and substituting the words “unless the offer”;
- (b) by deleting the words “or invitation” in subsection (1)(a);
- (c) by deleting paragraph (ii) of subsection (1)(a) and substituting the following paragraph therefor:
 - “(ii) a copy of which, being one that has been signed in accordance with subsection (2A), is lodged with the Authority; and”;
- (d) by inserting, immediately after subsection (1), the following subsections:
 - “(1A) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.
 - (1B) A preliminary document referred to in subsection (1A) must contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.”;
- (e) by deleting the words “to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme,” in the 2nd, 3rd, and 4th lines of subsection (2);
- (f) by deleting paragraph (b) of subsection (2) and the following paragraph substituted therefor:
 - “(b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (2A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement.”;
- (g) by deleting the words “or invitation” in subsection (2)(e);

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

“(2A) The copy of a prospectus or profile statement lodged with the Authority shall be signed –

(a) where the person making the offer of units in a collective investment scheme is the responsible person for the scheme, by every director or equivalent person of the responsible person and every person who is named therein as a proposed director or equivalent person of the responsible person; or

(b) where the person making the offer of units in a collective investment scheme is not the responsible person for the scheme, by the persons referred to in paragraph (a) and -

(iii) where the person making the offer is an entity, by every director or every equivalent person of that entity and every person who is named therein as a proposed director or equivalent person of that entity; or

(iv) where the person making the offer is an individual, by the individual or a person authorized by him in writing.

(2B) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a director or equivalent person of any person, or by a person named therein as a proposed director or equivalent person of any person, is satisfied if the copy is signed by that director, equivalent person or proposed director or equivalent person or by a person who is authorised in writing by such director, equivalent person or proposed director or equivalent person to sign on his behalf.”;

(i) by deleting the words “to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme,” in subsection (3);

(j) by deleting subsection (4);

(k) by deleting subsection (6) and the following subsections substituted therefor:

“(6) The Authority may register a prospectus or a profile statement on any day between the 14th and 21st day (both days inclusive) from the date of lodgment thereof with the Authority, unless –

(a) the Authority gives to the person making the offer a notice of an opportunity to be heard in accordance with subsection (12);

- (b) the Authority gives notice of an extension, in which case, the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement -
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard in accordance with subsection (12);
- (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, in which case the Authority may, at any time up to and including the date on which the extended period ends -
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of opportunity to be heard in accordance with subsection (12); or
- (d) the person making the offer gives notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

(6A) Where, after a notice of an opportunity to be heard has been given under subsection (6)(a), (b)(ii) or (c)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate except that that date shall not be earlier than the 14th day from the date of lodgment of the prospectus or profile statement with the Authority.

(6B) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (2A) and which contains the information required to be included in a prospectus as prescribed under subsection (1)(a)(i), including such information which can be omitted from the preliminary document by virtue of subsection (1B), has been lodged with the Authority.

(6C) A person making an offer of units in a collective investment scheme may lodge any amendment to a prospectus or profile statement, where applicable, in respect of that offer at any time before but not after the registration of the prospectus or profile statement by the Authority.”;

- (l) by deleting the words “prior to the registration of such prospectus” in subsection (7)(a)”;

- (m) by deleting the words “prior to the registration of such profile statement” in subsection (7)(b);
- (n) by deleting the words “prior to the registration of the prospectus or profile statement” in subsection (8);
- (o) by deleting paragraph (b) of subsection (8);
- (p) by deleting the words “the person who lodges the prospectus or profile statement and, where application, the translation” in the 7th, 8th and 9th lines of subsection (9) and substituting the words “the person making the offer”;
- (q) by deleting the words “a copy of any prospectus” in subsection (10) and substituting the words “ a prospectus”;
- (r) by deleting paragraphs (d) and (e) of subsection (10) and the following paragraphs substituted therefor:
 - “(d) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (2A);
 - (e) any written consent of an expert required by section 249 (as applied to this Subdivision by virtue of section 302) to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (ea) any written consent of an issue manager required by section 249A(1) (as applied to this Subdivision by virtue of section 302) to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (eb) any written consent of an underwriter required by section 249A(2) (as applied to this Subdivision by virtue of section 302) to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority; or”;
- (s) by deleting the words “a copy of any profile statement” in subsection (11) and substituting the words “a profile statement”;
- (t) by deleting paragraph (c) of subsection (11) and the following paragraph substituted therefor:
 - “(c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (2A);”;
- (u) by deleting subsection (12) and substituting the following subsection:
 - “(12) The Authority shall not refuse to register a prospectus under subsection (10) or a profile statement under subsection (11) without giving the person making the offer 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 person making the offer (being an entity) or the responsible person is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
 - (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
 - (c) 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 person making the offer (being an entity) or the responsible person.”;
- (v) by deleting subsection (13) and substituting the following subsection:
- “(13) Any person making the offer who is aggrieved by the refusal of the Authority to register a prospectus or profile statement to which his offer relates under subsection (10) or (11) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision is final.”;
- (w) by deleting the words “a copy thereof” in paragraph (a) of subsection (14) and substituting the word “it”;
- (x) by deleting the words “a copy of” in paragraph (b) of subsection (14); and
- (y) by deleting the words “the responsible person for the scheme” in the 11th line of subsection (14) and substituting the words “the person making the offer”.

Amendment of section 297

77. Section 297 of the principal Act is amended —

- (a) by deleting the words “the responsible person for the scheme” in the 13th line of subsection (1) and substituting the words “the person making the offer”;
- (b) by deleting the words “the responsible person for the scheme” in the 13th line of subsection (2) and substituting the words “the person making the offer”;
- (c) by deleting the words “the responsible person who lodged the prospectus or profile statement” in the 2nd and 3rd lines of subsection (3) and substituting the words “the person making the offer of units in the collective investment scheme”;

- (d) by deleting paragraph (a) of subsection (3) and substituting the following paragraphs therefor:
- “(a) the person making the offer (being an entity) or the responsible person is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
 - (aa) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;”;
- (e) by inserting, immediately after the words “any property of” subsection (3)(b), the words “the person making the offer (being an entity) or”;
- (f) by deleting paragraph (i) of subsection (4)(a) and the following paragraph substituted therefor:
- “(i) where units in the scheme have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled; or”;
- (g) by deleting the words “the responsible person” in the 9th line of subsection (4)(a) and substituting the words “the person making the offer of units in the scheme” and deleting the words “the responsible person” in the 12th and 13th lines and substituting the words “that person”;
- (h) by deleting the words “the responsible person for the scheme as it deems fit, including a direction that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund” in subsection (4)(b) and substituting the words “the person making the offer of units in the scheme as it deems fit, including a direction that the person provide the applicants with an option, on such terms as the Authority may approve, to obtain from that person a refund”;
- (i) by deleting the words “the responsible person” in the 2nd line of subsection (5) and substituting the words “the person making the offer of units in the scheme”;
- (j) by deleting the words “the responsible person who lodged the prospectus or profile statement” in subsection (7) and substituting the words “the person making the offer of units in the collective investment scheme”; and
- (k) by deleting the words “Any responsible person for a collective investment scheme” in subsection (11) and substituting the words “Any person”.

Amendment of section 298

78. Section 298 of the principal Act is amended —

- (a) by deleting the words “or invitation” in the 2nd line of subsection (1);
- (b) by deleting the words “the responsible person for a collective investment scheme” in the 4th and 5th lines of subsection (1) and substituting the words “the person making the offer”;
- (c) by deleting the words “the responsible person” in the 19th line of subsection (1) and substituting the words “the person”;
- (d) by deleting the words “or invitation” in the 2nd line of subsection (2);
- (e) by deleting the words “the responsible person for a collective investment scheme” in the 4th line of subsection (2) and substituting the words “the person making the offer”;
- (f) by deleting the words “the responsible person” in the 7th line of subsection (2) and substituting the words “the person”;
- (g) by deleting the words “or invitation” in subsection (3)(c);
- (h) by deleting subsection (6) and substituting the following subsection:

“(6) The person making the offer of units in a collective investment scheme shall take reasonable steps to -

- (a) inform potential investors of the lodgment of any supplementary document or replacement document under subsection (1); and
 - (b) make available to them the supplementary document or replacement document.”;
- (i) by deleting subsection (8); and
 - (j) by deleting subsection (10) and the following subsection substituted therefor:

“(10) Where, prior to the lodgment of the supplementary document or replacement document under subsection (1), applications have been made under the original prospectus or profile statement for units in a collective investment scheme, the person making the offer of units in the scheme shall –

- (a) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be; or
- (b) give the applicants the supplementary document or replacement document, as the case may be, within 7 days

from the date of lodgment of the supplementary document or replacement document.”.

Amendment of section 300

79. Section 300 of the principal Act is amended -

- (a) by deleting the words “or invitation” wherever they appear in subsection (1);
- (b) by deleting the words “to the public for subscription or purchase” in subsection (1);
- (c) by deleting the words “or complies with such requirements as may be prescribed” in subsection (1);
- (d) by deleting subsection (2) and substituting the following subsection:

“(2) In determining whether a statement –

- (a) indirectly refers to an offer or intended offer; or
- (b) is reasonably likely to induce persons to subscribe for or purchase units in a collective investment scheme,

regard shall be had to whether the statement –

- (i) forms part of the normal advertising of an entity’s products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and
- (ii) is likely to encourage investment decisions to be made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.”;

- (e) by inserting, immediately after subsection (2), the following subsections:

“(2A) Notwithstanding subsection (3A), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, persons specified in section 305(1) and persons to whom an offer referred to in section 305(1A) is made without contravening subsection (1), if –

- (a) the front page of the preliminary document contains -

- (i) the following statement:

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Authority.”;

- (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and
 - (iii) a statement in bold lettering that no offer shall be made or received, and no agreement shall be made, on the basis of the preliminary document, to purchase or subscribe for any units in the collective investment scheme to which the preliminary document relates;
- (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of units in the collective investment scheme to which the preliminary document relates, or the acceptance of such an offer by any person; and
- (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.
- (2B) Notwithstanding subsection (3A), a person does not contravene subsection (1) by presenting oral or written material, on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, persons specified in section 305(1) and persons to whom an offer referred to in section 305(1A) is made before a prospectus or profile statement is registered by the Authority.”;
- (f) by inserting, immediately after the words “registered by the Authority” in subsection (3), the words “under section 296”;
- (g) by inserting, immediately after subsection (3), the following subsections:
- “(3A) Before a prospectus or profile statement is registered, an advertisement or publication does not contravene subsection (1) if it contains only the following:
- (a) a statement that identifies the responsible person for the collective investment scheme and, where the collective investment scheme is not a corporation, the name of the collective investment scheme;
 - (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
 - (c) a statement that anyone wishing to acquire the units in the collective investment scheme will need to make an

application in the manner set out in the prospectus or profile statement;

(d) a statement on how to arrange to obtain a copy of the prospectus or profile statement; and

(e) the investment focus of the collective investment scheme.

(3B) To satisfy subsection (3A), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the information referred to in paragraphs (d) and (e).

(3C) After a prospectus or profile statement is registered with the Authority, an advertisement or publication does not contravene subsection (1) if it complies with such requirements as may be prescribed by the Authority.”;

(h) by deleting paragraph (a) of subsection (4) and the following paragraphs substituted therefor:

“(a) consists solely of —

(i) a notice or report to a securities exchange, futures exchange or recognised securities exchange; or

(ii) a disclosure or publication required under this Act or any listing rules of such securities exchange, futures exchange or recognised securities exchange,

made by any person about its affairs, provided that the notice, report, disclosure or publication complies such requirements as may be prescribed;

(aa) consists solely of a notice or report of a meeting of the participants of the collective investment scheme or a general meeting of the person making the offer, the responsible person or any corporation;”;

(i) by deleting the words “prepared in accordance with” in subsection (4)(b) and substituting the words “issued pursuant to this Act and”;

(j) by deleting sub-paragraph (ii) of subsection (4)(c) and substituting the following sub-paragraph therefor:

“(ii) a notice or report referred to in paragraph (a), (aa) or (b);”;

(k) by deleting the “full-stop” at the end of sub-paragraph (iii) of subsection (4)(d) and substituting a “semi-colon” and inserting immediately thereafter the following paragraphs:

“(f) is a report on the units in the collective investment scheme, published and delivered to any institutional investor not later

than 14 days prior to the date of lodgment of the prospectus, provided that—

- (i) the offer is made in one or more other countries;
 - (ii) the publication and delivery of such report in that other country or any one of those other countries do not infringe any law, code or other requirement of that country; and
 - (ii) the report and the manner of its publication and delivery in Singapore comply with such other requirements as may be prescribed by the Authority;
- (g) is a publication made by the person making the offer or the responsible person for the scheme solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in a publication referred to in paragraph (c) or a publication (which is not an advertisement) referred to in subsection (5), provided that the publication does not contain information other than information contained in the prospectus.”; and
- (l) by deleting the words “and, in the case of a corporation, every officer or other person, who knowingly authorized or permitted the publication or dissemination,” in subsection (7) and substituting the words “and any person who knowingly authorised or permitted the publication or dissemination in contravention of subsection (1)”.

Repeal and reenactment of section 302

80. Section 302 of the principal Act is repealed and the following section substituted therefor:

“Application of provisions relating to securities

302.—(1) Sections 247, 249, 249A, 252, 253, 254 and 255 shall with the necessary modifications apply in relation to an offer of units in a collective investment scheme as they apply in relation to an offer of securities in Division 1 of this Part.

(2) For the purposes of subsection (1), references in those sections to securities and to a person subscribing for, purchasing or acquiring securities shall be read as references to units in a collective investment scheme and to a person subscribing for, purchasing or acquiring such units, respectively.

(3) For the purposes of subsection (1), references in sections 253 and 254 to an offer referred to in section 280 shall be read as a reference to an offer referred to in section 305D.”.

New sections 302A, 302B, 302C

81. The principal Act is amended by inserting, immediately after the Subdivision heading of “Subdivision (4) – Exemptions” in Subdivision 4, the following sections:

“Issue or transfer for no consideration

302A.-(1) Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (other than an offer of an option to subscribe for or purchase such units) if no consideration is or will be given for the issue or transfer of the units.

(2) Subdivisions (2) and (3) of this Division shall not apply to an offer of an option to subscribe for or purchase units in a collective investment scheme if–

- (a) no consideration is or will be given for the issue or transfer of the option; and
- (b) no consideration is or will be given for the underlying units on the exercise of the option.

Small offers

302B.-(1) Subdivisions (2) and (3) of this Division shall not apply to personal offers of units in a collective investment scheme by a person if –

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed-
 - (i) \$5 million (or its equivalent in a foreign currency); or
 - (ii) such other amount as the Authority may, by order published in the *Gazette*, specify in substitution for the amount specified in sub-paragraph (i);
- (b) the person making the offer notifies every person to whom he makes the offer that -
 - (i) the offer is made in reliance on the exemption in this subsection; and
 - (ii) the units being offered shall not be subsequently sold to any person other than persons specified in subsection (7)(a), unless such subsequent offer is made in compliance with Subdivisions (2) and (3) of this Division.

(1A) For the purposes of subsection (1)(b), the person making the offer is deemed to have notified every person to whom he makes

the offer if such notification is contained on the first page of any notice, circular, material, advertisement, publication or other document issued in connection with the offer.

(2) In subsection (1), a personal offer of units in a collective investment scheme is one that—

- (a) may only be accepted by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in that offer, having regard to--
 - (i) previous contact between the person making the offer and that person;
 - (ii) some professional or other connection between the person making the offer and that person; or
 - (iii) statements or actions by that person that indicate that he is interested in offers of that kind.

(3) In determining the amount raised by an offer of units in a collective investment scheme, the following shall be included:

- (a) the amount payable for the units at the time when they are issued;
- (b) in the case of an option, any amount payable on the exercise of the option.

(4) In determining whether the amount raised by an offer does not exceed the applicable amount specified in subsection (1)(a), any amount raised by the person making the offer by a previous offer of offers of units in the same collective investment scheme shall be included if the second-mentioned offer—

- (a) was made within the period of 12 months ending with the date on which the first-mentioned offer is made; and
- (b) is one to which Subdivisions (2) and (3) of this Division do not apply but only by virtue of this section.

(5) For purposes of this section, the Authority may determine in writing that an individual, an entity or a trust is closely related to the person making the offer of units in a collective investment scheme in reliance on the exemption in subsection (1) (referred to in this subsection as the exempt offer), in which case, any amount raised from -

- (a) a previous offer of units made by such individual, entity or trust; or
- (b) a previous offer of securities or interests in such entity or trust made by the person making the offer,

shall be included in determining whether the exempt offer exceeds the applicable amount specified in subsection (1)(a) if such previous offer –

- (i) was made within the period of 12 months ending with the date on which the exempt offer is made; and
- (ii) is one to which Subdivisions (2) and (3) of this Division do not apply but only by virtue of this section.

(6) For the purpose of subsection (5) –

- (a) “interest”, in relation to a unit in a trust, means any right or interest, whether legal or equitable, in the unit of the trust, by whatever name called, and includes any option to acquire any such right or interest in the unit of the trust; and
- (b) “unit”, in relation to a trust, means a right or financial stake of a unitholder in the trust; and
- (c) “unitholder” means a person who holds units in a trust (whether as a contributor to the trust or as a person who acquired such units from another person who is or was a unitholder in the trust).

(7) For the purposes of this section, an offer of securities made by a person as an agent of another person shall be treated as an offer made by that other person.

(8) Subdivisions (2) and (3) of this Division shall not apply to an offer by any person to sell any units in a collective investment scheme acquired from an offer made in reliance on the exemption in subsection (1) (referred to in this subsection as an initial offer) to any other person if and only if —

- (a) the offer is one that may only be accepted by the person to whom it is made;
- (b) the offer is one that is made -
 - (i) to a person who is likely to be interested in the offer having regard to—
 - (A) previous contact before the date of the offer between the person making the initial offer and that person;
 - (B) some professional or other connection established before that date between the person making the initial offer and that person;
 - (C) statements or actions made before that date by that person that indicate that he is interested in offers of that kind; or

- (ii) in reliance on an exemption under section 302A, 304 or 305; and
- (c) the first-mentioned person provides a notification in accordance with paragraph (b) of subsection 1, and the reference in that paragraph to the date shall refer to the date the securities were acquired under the initial offer.

Private placements

302C.-(1) Subdivisions (2) and (3) of this Division shall not apply to offers of units in a collective investment scheme that are made to no more than –

- (a) 20 persons; or
- (b) such other number of persons as the Authority may, by order published in the *Gazette*, specify in substitution for the number specified in sub-paragraph (a).

(2) In determining whether an offer of units in a collective investment scheme is made to no more than the applicable number of persons specified in subsection (1), persons (other than those to whom the first-mentioned offer is made) to whom any other offer of units in the same collective investment scheme made by the same person shall be included if the second-mentioned offer –

- (a) was made within the period of 12 months ending with the date on which the first-mentioned offer is made; and
- (b) is one to which Subdivisions (2) and (3) of this Division do not apply but only by virtue of this section.

(3) For purposes of this section, the Authority may determine in writing that an individual, an entity or a trust is closely related to the person making the offer of units in a collective investment scheme in reliance on the exemption in subsection (1) (referred to in this subsection as the exempt offer), in which case, the persons to whom –

- (a) a previous offer of units made by such individual, entity or trust; or
- (b) a previous offer of securities or interests in such entity or trust made by the person making the offer;

shall be included in determining whether the exempt offer is made to no more than the applicable number of persons specified in subsection (1) if such previous offer –

- (i) was made within the period of 12 months ending with the date on which the exempt offer is made; and
- (ii) is one to which Subdivisions (2) and (3) of this Division do not apply but only by virtue of this section.

- (4) For the purpose of subsection (3) –
- (a) “interest”, in relation to a unit in a trust, means any right or interest, whether legal or equitable, in the unit of the trust, by whatever name called, and includes any option to acquire any such right or interest in the unit of the trust; and
 - (b) “unit”, in relation to a trust, means a right or financial stake of a unitholder in the trust; and
 - (c) “unitholder” means a person who holds units in a trust (whether as a contributor to the trust or as a person who acquired such units from another person who is or was a unitholder in the trust).
- (5) For the purposes of sub-section (1)–
- (a) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units which are the subject of the offer;
 - (b) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the units which are the subject of the offer;
 - (c) an offer of units in a collective investment scheme to 2 or more persons who will own the units acquired as joint owners shall be treated as an offer to a single person;
 - (d) offers of units in a collective investment scheme made by a person as an agent of another person shall be treated as offers made by that other person; and
 - (e) where—
 - (i) an offer of units in a collective unit scheme is made to a person in reliance on the exemption under subsection (1) with a view to those securities being subsequently offered for sale to another person; and
 - (ii) that subsequent offer –
 - (A) is not made in reliance on an exemption under any provision of this Subdivision; or
 - (B) is made in reliance on an exemption under section 305D or subsection (1),

both persons shall be included for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in that subsection.

(6) For the purposes of subsection (5)(e), an offer of units in a collective investment scheme to a person shall, unless the contrary is proved, be deemed to have been made with a view to them being subsequently offered for sale to another person if it is shown that -

- (a) the subsequent offer is made within 6 months after these units were acquired under the initial offer; or
- (b) at the date of the making of the subsequent offer, the whole consideration to be received by the person making the initial offer in respect of the units had not been so received.”

Repeal and re-enactment of sections 303, 304, 304A

82. Sections 303, 304 and 304A of the principal Act are repealed and the following sections substituted therefor:

“Offer or invitation made under certain circumstances

303. Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme if -

- (a) it is made in relation to units in a collective investment scheme that have been previously issued and that are quoted, or listed for quotation, on a securities exchange; or
- (b) it is an offer to enter into an underwriting agreement relating to units in a collective investment scheme.

Offer made to institutional investors

304. Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme made to an institutional investor.

First sale of units acquired pursuant to section 304

304A. Where units in a collective investment scheme acquired in reliance on an exemption in section 304 are first sold to any person other than one specified in that section, then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale even if it would otherwise (but for this section) have been exempted from those Subdivisions (or either of them) by virtue of section 302B, 302C, 303, 305B or 305C.”.

Amendment of section 305

83. Section 305 of the principal Act is amended -

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

“(1) Except to such extent and with such modifications as may be prescribed, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (referred to in this section as a restricted scheme) –

- (a) made to an accredited investor;
- (b) made to a corporation whose sole business is to hold investments and whose entire share capital is owned by one or more individuals each of whom is an accredited investor;
- (c) where the person making the offer is not an individual, made to an officer or equivalent person of the person making the offer or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or
- (d) where the person making the offer is an individual, made to a spouse, parent, brother, sister, son or daughter of that person,

if the conditions in subsection (1B) are satisfied.

(1A) Except to such extent and with such modifications as may be prescribed, subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme to a person who acquires the units as principal if the offer is on terms that they may only be acquired at a consideration of not less than \$200,0000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash, by exchange of securities or other assets, and if the conditions in subsection (1B) are satisfied.

(1B) The conditions referred to in subsections (1) and (1A) are:

- (a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer;
- (b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities; and

(c) the offer is made in or accompanied by an information memorandum which -

(i) contains the following statement:

“The offer which is the subject of this information memorandum is not allowed to be made to the retail public. This information memorandum is not a prospectus as defined in the Securities and Futures Act. Accordingly statutory liability under that Act in relation to the content of prospectuses would not apply. You should consider carefully whether the investment is suitable for you.”; and

(ii) states the particulars in respect of the scheme.”;

- (b) by deleting the words “subsection (1)(iii)(B)” in subsection (2) and substituting the words “subsection (1B)(c)(ii)”;
- (c) by deleting the words “or invitation in respect” in subsection (2)(b);
- (d) by deleting the words “referred to in subsection (1)(a)” in subsection (2)(c) and substituting the words “which is constituted in Singapore.”;
- (e) by deleting the words “referred to in subsection (1)(b) which” in subsection (2)(d) and substituting the words “which is constituted outside Singapore”;
- (f) by deleting the words “constituted as” wherever they appear in subparagraphs (i) and (ii) of subsection (2)(d);
- (g) by deleting the words “an offer or invitation in respect of units in a collective investment scheme but does not include an information memorandum” in the definition of “advertisement” in subsection (3) and substituting the words “an offer of units in a collective investment scheme but does not include – (i) an information memorandum; or (ii) an announcement made by an entity listed on a securities exchange or a recognised securities exchange pursuant to any requirement of that securities exchange or recognised securities exchange”;
- (h) by deleting the words “by sophisticated investors” in paragraph (b) of the definition of “information memorandum” in subsection (3) and substituting the words “by investors specified in subsection (1) or to whom an offer referred to in subsection (1A) is made”;
- (i) by deleting “or invitation” in paragraph (b) of the definition of “information memorandum” in subsection (3);
- (j) by deleting the definition of “sophisticated investor” in subsection (3);
- (k) by deleting the words “paragraph (a) or (b) in the definition of “sophisticated investor” in subsection (3)” in subsection (5) and substituting the words “subsection (1A)”;

- (l) by deleting the words “or invitation made to sophisticated investors” in the section heading and substituting the words “made to accredited investors and certain other investors”.

Repeal and re-enactment of section 305A

84. Section 305A of the principal Act is repealed and the following section substituted therefor:

“First sale of units acquired pursuant to section 305

305A.-(1) Where units in a collective investment scheme acquired in reliance on the exemption in section 305 are first sold to any person other than an institutional investor, a person specified in section 305(1) or a person to whom an offer referred to in section 305(1A) is made, then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale even if it would otherwise (but for this section) have been exempted from those Subdivisions (or either of them) by virtue of section 302B, 302C, 303, 305B or 305C.

(2) Securities of a corporation—

- (a) whose sole business is to hold investments; and
- (b) whose entire share capital is owned by 1 or more individuals each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any units in a collective investment scheme issued in reliance on the exemption under section 305, unless –

- (i) the offer resulting in that transfer is only made to institutional investors, persons specified in section 305(1) or persons to whom an offer referred to in section 305(1A) is made;
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.”

New sections 305B, 305C, 305D

85. The principal Act is amended by inserting, immediately after section 305A, the following sections:

“Securities exchange offer

305B.-(1) Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme that is in respect of units that are, or are to be, uniform in all respects with units previously issued and listed for quotation on a securities exchange where –

(a) an offer information statement which complies with such form and content as may be prescribed by the Authority is lodged with the Authority and the securities exchange, and

(b) the offer is made in or accompanied by the offer information statement referred to in (a).

(2) Subsection (1) shall apply only for a period of 6 months from the date of lodgment of the offer information statement.

(3) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.

(4) For the purposes of this section, units shall be deemed to be uniform in all respects with units previously issued notwithstanding that they do not carry the same rights to dividends as the latter during the 12 months immediately following the issue.

(5) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as may be prescribed shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(6) For the purposes of subsection (5) --

(a) a reference in section 249 and 249A to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment; and

(b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus shall be read as a reference to any information prescribed under subsection (1)(a).

(7) Where the written consent of an expert to the issue of an offer information statement is required to be given under section 249 (as applied in relation to that statement under subsection (5)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

(8) Where the written consent of an issue manager or underwriter to the issue of an offer information statement is required to be given under section 249A (as applied in relation to that statement under subsection (5)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

Renounceable rights issue

305C.-(1) Subject to subsection (2), Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme by means of a rights issue which is renounceable in favour of persons other than existing participants of that collective investment scheme where--

- (a) an application has been or will be made for permission for the units to be listed for quotation on any securities exchange;
- (b) an offer information statement which complies with such form and content as may be prescribed by the Authority is lodged with the Authority; and
- (c) the offer is made in or accompanied by the offer information statement referred to in paragraph (b).

(2) Subsection (1) shall apply only for a period of 6 months from the date of lodgment of the offer information statement.

(3) The Authority may, on the application of any responsible person, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.

(4) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as may be prescribed shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4) --

- (a) a reference in section 249 to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment; and
- (b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus shall be read as a reference to any information prescribed under subsection (1)(b).

(6) Where the written consent of an expert to the issue of an offer information statement is required to be given under section 249 (as applied in relation to that statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

(7) Where the written consent of an issue manager or underwriter to the issue of an offer information statement is required to be given under section 249A (as applied in relation to that statement under subsection (4)),

that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.”

Offer using ATM and other electronic means

305D.-(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of units in a collective investment scheme using –

- (a) any automated teller machine; or
- (b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 296(1)(a) or, where applicable, section 296(2) that the offer be made in or accompanied by a prospectus or, where applicable, a profile statement, in respect of the offer.

(2) For the avoidance of doubt, a prospectus or, where applicable, profile statement must still be prepared and issued in respect of the offer referred to in subsection (1) that complies with section 296(1)(a)(i), (ii) and (iii) or (2)(a) to (d), as the case may be.

(3) Subsection (1) applies only if, before enabling the submission of an application to subscribe for or purchase units, the automated teller machine or prescribed electronic means indicates to the prospective subscriber or buyer –

- (a) how a copy of the prospectus or, where applicable, profile statement in respect of the offer can be obtained; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application.”

Amendment of section 308

86. Section 308 of the principal Act is amended by deleting the words “or invitation” in the section and the words “or invitations” in the section heading.

Repeal of section 314

86A. Section 314 of the principal Act is repealed.

Repeal of section 315

87. Section 315 of the principal Act is repealed.

Amendment of First Schedule

88. The First Schedule to the principal Act is deleted and the following schedule substituted therefor:

“FIRST SCHEDULE

Section 2

PART I MARKET

Definition of market

1. In this Act, “market” means a securities market or futures market.

Definition of futures market

2.(1) In this Act, “futures market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts (whether through that place or facility or otherwise).

(2) For the purposes of this Act, “futures market” does not include a place or facility used by only one person —

(a) to regularly make offers or invitations to sell, purchase or exchange futures contracts; or

(b) to regularly accept offers to sell, purchase or exchange futures contracts.

Definition of securities market

3.(1) In this Act, “securities market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange issued securities or prescribed securities, are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities or prescribed securities (whether through that place or facility or otherwise).

(2) For the purposes of this Act, “securities market” does not include —

- (a) a place or facility used by only one person to regularly make offers or invitations to sell, purchase or exchange securities;
or
- (b) a place or facility used by only one person to regularly accept offers to sell, purchase or exchange securities.

PART II CLEARING FACILITY

Definition of Clearing Facility

In this Act –

“clearing facility” means a facility for the clearing or settlement of transactions in securities or futures contracts; and

“clearing or settlement” means an arrangement, process, mechanism or service, provided by a person in respect of transactions in securities or futures contracts, by which –

- (a) information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;
- (b) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;
- (c) the obligations of parties under those transactions are calculated, whether such calculations include multilateral netting arrangements or not; or
- (d) parties to those transactions meet their obligations under such transactions, including the obligation to deliver, the transfer of funds or the transfer of title to securities between parties,

but does not include the back office operations of a party to these transaction.”

Amendment of Second Schedule

89. Part II of the Second Schedule to the principal Act is amended by inserting, immediately after the definition of “fund management”, the following definition:

“ “futures contract” means —

- (a) a contract the effect of which is that —
 - (i) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to

another party at a specified future time and at a specified price payable at that time pursuant to terms and conditions set out in the business rules or practices of a futures market; or

- (ii) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the business rules or practices of a futures market at which the contract is made,

and includes a futures option transaction; or

- (b) such other contract or classes of contracts as the Authority may prescribe;”.

Amendment of Third Schedule

90. Paragraph 8 in the Third Schedule to the principal Act is deleted.

Consequential amendments

91. The principal Act is amended —

- (a) by deleting the words “recognised trading system provider” wherever they appear in the following provisions and substituting in each case the words “recognised market operator”:

Sections 2 (definitions of “business rules”, “futures option transaction”, “listing rules”, “member” and “quote”), 86(3), 99(1)(f), 122(1), 125(4) and (9)(b)(iii), 126, 127(b), 130(2)(b), 150(1), 322(1)(a), 328(2) (definition of “relevant person”), 332(1), 334(2) (definition of “relevant person”), 338(2)(a) and 341(2)(f);

- (b) by deleting the words “clearing house” wherever they appear in the following provisions and substituting in each case the words “designated clearing house”:

Sections 2 (definitions of “business rules” and “member”), 99(1)(g), 110(1)(c), 114, 142(4), 150(1), 186(14)(b), 322(1)(a) and (2)(g) and (h), 325(1)(a)(ii) and (1)(d), 328(2)(definition of “relevant person”), 330(1) and section heading, 332(1) and 334(2) (definitions of “misconduct” and “relevant person”);

- (c) by deleting the words “exchange holding company” wherever they appear in the following provisions and substituting in each case the words “approved holding company”:

Sections 2 (definition of “business rules”), 150(1), 322(1)(a), 328(2) (definition of “relevant person”), 332(1) and 334(2) (definition of “relevant person”);

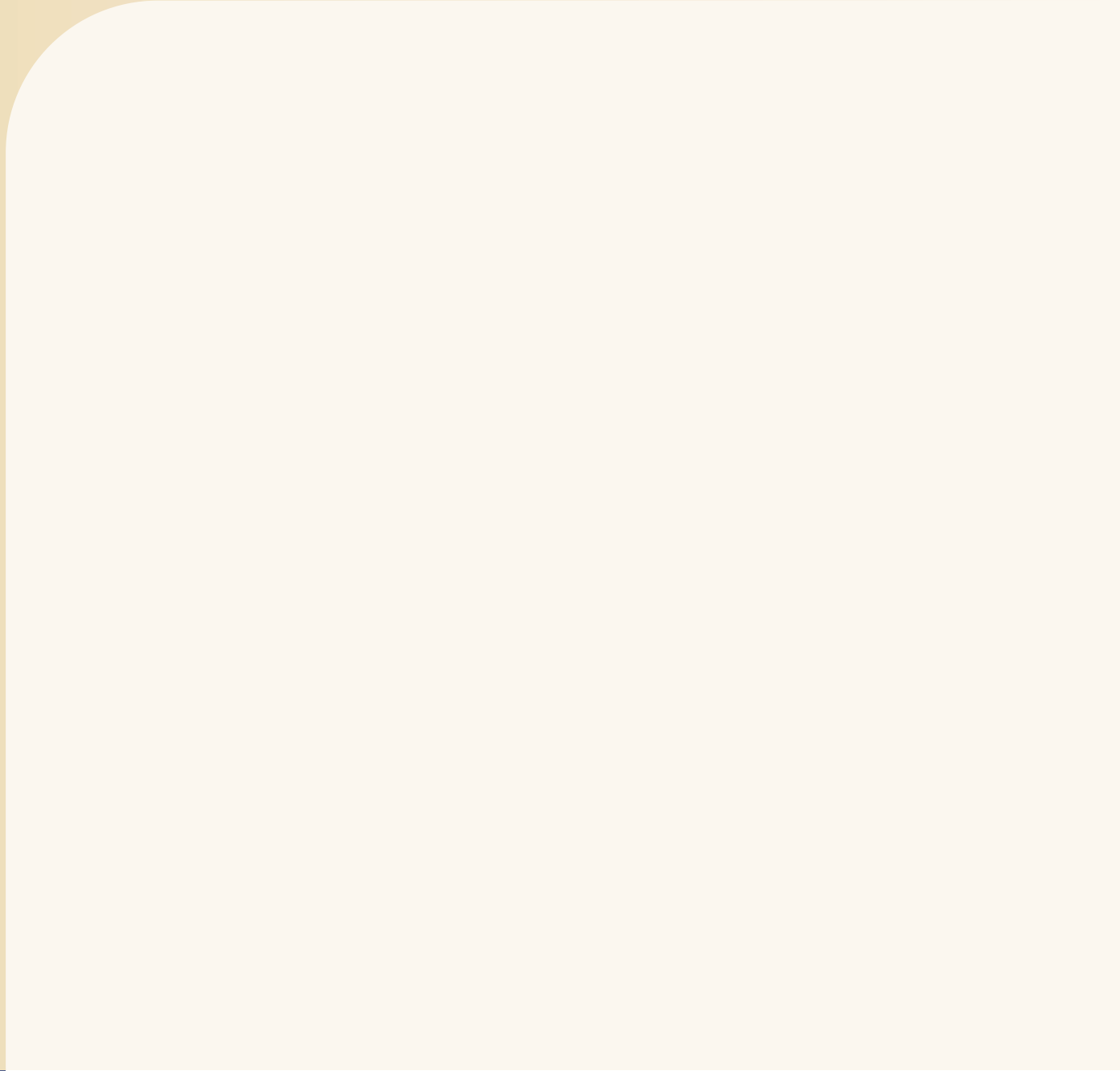
- (d) by deleting the words “a person granted an exemption under section 5(3) or 6(3)” wherever they appear in the following provisions and substituting in each case the words “an exempt market operator”:

Sections 150(1), 322(1)(a) and 334(2)(definition of “relevant person”);

- (e) by deleting the words “a person operating an exempt clearing facility,” in the following provisions:

Sections 150(1) and 334(2)(definition of “relevant person”);

- (f) by deleting the words “exempt clearing facility” in section 322(1) and substituting the words “clearing facility”;
- (g) by deleting the words “person granted an exemption under 5(3) or 6(3)” in section 328(2) (definition of “relevant person”) and substituting the words “exempt market”;
- (h) by deleting the words “person operating an exempt clearing facility,” in the definition of “relevant person” in section 328(2); and
- (i) by deleting the words “clearing house” in Section 341(2)(f) and substituting the words “clearing facility”.



Monetary Authority of Singapore