DRAFT AMENDMENTS TO SECTION 2 OF THE SFA

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

SECURITIES AND FUTURES ACT

(CHAPTER 289)

PART I

PRELIMINARY

[…..]

2. —(1) In this Act, unless the context otherwise requires —

"advising on corporate finance" has the meaning given to it in the Second Schedule;

"advocate and solicitor" means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);

"appointed representative" , in respect of a type of regulated activity, has the meaning given to that expression in section 99D, and “appointed representative” means an appointed representative in respect of any type of regulated activity;

“approved clearing house” means a corporation that is approved by the Authority under section 51(1)(i) as an approved clearing house;

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

[…..]

"book" includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

"business rules", in relation to an approved holding company, a securities exchange, a futures exchange, a recognised market operator, an approved clearing house, a recognised clearing house, a licensed trade repository or a licensed overseas trade repository ~~or a designated clearing house~~, means the rules, regulations, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —

(*a*) the approved holding company, securities exchange, futures exchange, recognised market operator, an approved clearing house, a recognised clearing house, a licensed trade repository or a licensed overseas trade repository ~~or designated clearing house~~ and its members; and (*b*) other persons in relation to it,

whether or not those rules, regulations, by-laws or similar body of statements are made by the approved holding company, securities exchange, futures exchange, recognised market operator, an approved clearing house, a recognised clearing house, a licensed trade repository or a licensed overseas trade repository ~~or designated clearing house~~ or are contained in its constituent documents, but does not include the listing rules of a securities exchange or recognised market operator (which is an overseas securities exchange);

"business trust" has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

[…..]

"corporation" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"customer" means —

(a) in relation to a holder of a capital markets services licence —

(i) for the purposes of Parts IV, VI, VII and XV, a person on whose behalf the holder carries on or will carry on any regulated activity; or

(ii) for the purposes of Part V, a person on whose behalf the holder carries on or will carry on any regulated activity, or any other person with whom the holder, as principal, enters or will enter into transactions —

(A) for the sale or purchase of securities;

(B) for the sale or purchase of futures contracts; or

(C) in connection with leveraged foreign exchange trading,

but does not include such person or class of persons as may be prescribed; or

(b) for the purposes of Part III and the definition of "user", a person on whose behalf a member of an approved exchange, an approved ~~or a designated~~ clearing house, a recognised clearing house, a licensed trade repository, or licensed overseas trade repository, as the case may be, carries on any activity regulated under this Act, but does not include —

(i) the member, with respect to dealings for the member's own account;

(ii) any officer, director, employee or representative of the member; or

(iii) a related corporation of the member, with respect to accepted instructions to deal for an account belonging to, and maintained wholly for the benefit of, that related corporation;

"dealing in securities" has the meaning given to it in the Second Schedule;

"debenture", except for the purposes of Part XIII, includes any debenture stock, bond, note and any other debt securities issued by a corporation or any other entity, whether constituting a charge or not, on the assets of the issuer but does not include —

(a) a cheque, letter of credit, order for the payment of money or bill of exchange; or

(b) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

"defalcation" means misapplication, including misappropriation, of any property;

"derivative", in relation to a unit in a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

"derivatives contract" –

(a) for the purposes of Part IIA, has the meaning given to it in section 47;

(b) for the purposes of Part III, has the meaning given to it in section [2 of Part on Trade Repositories][1];

~~"designated clearing house" means a person that is designated by the Authority under section 55 (1) as a designated clearing house;~~

"director" has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

[…..]

"limited liability partnership" has the same meaning as in section 2 (1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

"licensed overseas trade repository" means a corporation which has been granted an overseas trade repository licence by the Authority under section [5(2) of part on Trade Repositories][1];

"licensed trade repository" means a corporation which has been granted a trade repository licence by the Authority under section [5(1) of part on trade repositories][1]

[1] This refers to the numbering in the proposed Part III on Trade Repositories.

"listing rules", in relation to a corporation that establishes or operates, or proposes to establish or operate, a securities market of a securities exchange or a recognised market operator, or an overseas securities exchange that establishes or operates or proposes to establish or operate a securities market of a recognised market operator, means rules governing or relating to —

(a) the admission to the official list of the corporation or overseas securities exchange, of corporations, governments, bodies unincorporate or other persons for the purpose of the quotation on the securities market of the corporation or overseas securities exchange of securities issued, or made available by such corporations, governments, bodies unincorporate or other persons, or the removal from that official list and for other purposes; or

(b) the activities or conduct of corporations, governments, bodies unincorporate and other persons who are admitted to that list, whether those rules are made —

(i) by the corporation or overseas securities exchange or are contained in any of the constituent documents of the corporation or overseas securities exchange; or

(ii) by another person and adopted by the corporation or overseas securities exchange;

"manager", in relation to a collective investment scheme, means a person, by whatever name called, who is responsible for managing the property of, or operating, the collective investment scheme;

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

"member", in relation to an approved exchange, a recognised market operator, an approved clearing house, a recognised clearing house, a licensed trade repository or a licensed overseas trade repository, ~~or a designated clearing house,~~ means a person who holds membership of any class or description in the approved exchange, recognised market operator, approved clearing house, recognised clearing house, licensed trade repository or licensed overseas trade repository, ~~or designated clearing house,~~ whether or not he holds any share in the share capital of the approved exchange, recognised market operator, approved clearing house, recognised clearing house, licensed trade repository or licensed overseas trade repository, ~~or designated clearing house,~~ as the case may be;

"newspaper" has the same meaning as in section 2 of the Newspaper and Printing Presses Act (Cap. 206);

"officer" has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

"overseas futures exchange" means a person operating a futures market outside Singapore which is regulated by a financial services regulatory authority of a country or territory other than Singapore;

"overseas securities exchange" means a person operating a securities market outside Singapore which is regulated by a financial services regulatory authority of a country or territory other than Singapore;

"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 IIA ~~III~~, a person who, under the business rules of an approved clearing house or a recognised clearing house ~~designated clearing house~~, may participate in one or more of the services provided by the approved clearing house or the recognised clearing house ~~designated clearing house~~ in its capacity as an approved clearing house or a recognised clearing house, respectively ~~designated clearing house~~; or

(c) for the purposes of any other provision of this Act, a person who participates in a collective investment scheme by way of owning one or more units in a collective investment scheme;

“partner” and “manager”, in relation to a limited liability partnership, have the respective meanings assigned to them in section 2 (1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

[…..]

"real estate investment trust management" has the meaning given to it in the Second Schedule;

“recognised clearing house” means a corporation that is recognised by the Authority under section 51(1)(ii) or (2) as a recognised clearing house;

"recognised market operator" means a corporation that is recognised by the Authority under section 8 (2) as a recognised market operator;

[…..]

"trading in futures contracts" has the meaning given to it in the Second Schedule;

"transaction information" means information relating to —

(a) offers or invitations to enter into, purchase, sell, or exchange securities, futures contracts or derivatives contracts ~~or futures contracts~~;

(b) executed transactions in securities, futures contracts or derivatives contracts ~~or futures contracts~~; or

(c) transactions cleared or settled by an approved clearing house or a recognised clearing house ~~designated clearing house~~;

(d) transactions with respect to which information has been reported to a licensed trade repository or a licensed overseas trade repository;

"unit" —

(a) in relation to a collective investment scheme, means a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; and

(b) in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

"unitholder", in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act;

"user", in relation to an approved exchange, an approved clearing house, a recognised clearing house, a licensed trade repository or a licensed overseas trade repository ~~or a designated clearing house~~, means a person who is —

(a) a member; or

(b) a customer of a member,

of the approved exchange, approved clearing house, recognised clearing house, licensed trade repository or licensed overseas trade repository ~~or designated clearing house~~, as the case may be;

"user information" means transaction information that is referable to —

(a) a named user; or

(b) a group of users, from which the name of a user can be directly inferred;

"voting share" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50).

[…..]