

**THE SECURITIES AND FUTURES  
ACT 2001**

**(No. of 2001)**

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A BILL

*intituled*

An Act relating to the regulation of activities and institutions in the securities and futures industry, including leveraged foreign exchange trading, and for matters connected therewith.

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

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the Securities and Futures Act 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

**Interpretation**

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

“accredited investor” means —

- (a) an individual whose net personal assets exceed \$5 million or its equivalent in value in foreign currencies; or
- (b) a corporation with net assets exceeding \$10 million in value or its equivalent in value in foreign currencies as determined in accordance with the most recent audited balance-sheet of the corporation;

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

“auditor” means an approved company auditor as defined in section 4 of the Companies Act (Cap.50);

“Authority” means the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap.186);

“book” includes any electronic 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 a corporation that is an exchange holding company, securities exchange, futures exchange or clearing house means the rules, regulations and by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —

- (a) the corporation and its members; and
- (b) other persons in relation to that corporation,

whether or not those rules, regulations or by-laws are made by the corporation or are contained in the constituent documents of the corporation, but excludes the listing rules of a securities exchange;

“capital markets products” includes securities, futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements for the purposes of leveraged foreign exchange trading and such other capital markets products as the Authority may from time to time prescribe;

“capital markets services licence” means a licence that is granted by the Authority under section 74 to a person to carry on business in any regulated activity.

“clearing facility” means a facility for the —

- (a) clearing and settlement of securities or futures contracts traded on a stock market or a futures market; and
- (b) making of adjustments to the contractual obligations arising out of those securities or futures contracts;

“clearing house” means any corporation which has been approved by the Authority under section 42;

“Code on Collective Investment Schemes” means the code referred to in section 286(2)(b) which is published by the Authority under section 286(1);

“collective investment scheme” has the meaning given to it in section 259;

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

- (a) a financial instrument; or
- (b) gold or such other items, goods, articles, services, rights or interests, which are the subject of futures contracts, as the Authority may by order prescribe;

“company” has the same meaning as in the Companies Act (Cap.50);

“connected person”, in relation to —

- (a) an individual, means —
  - (i) the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, mother, brother or sister; and
  - (ii) a firm as defined in section 2 of the Business Registration Act or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm or corporation, whether such control is exercised individually or jointly;
- (b) a firm or a corporation, means another firm or corporation in which the first-mentioned firm or corporation has control of not less than 20% of the voting power in that other firm or corporation;

“corporation” has the same meaning as in the Companies Act;

- “customer” means a person on whose account a holder of a capital markets services licence carries on any regulated activity;
- “defalcation” means misapplication, including misappropriation, of any property;
- “dealing in securities” has the meaning given to it in the Second Schedule;
- “director” has the same meaning as in the Companies Act (Cap.50);
- “exchange holding company” means any corporation which is a holding company, as defined in section 5 of the Companies Act, of any securities exchange, futures exchange or clearing house, or of any corporation that is an exchange holding company, and that is approved by the Authority under section 24;
- “exempt market” means a stock market or futures market in relation to which, or a stock market or futures market included in a class of stock markets or futures markets, being a class in relation to which, a declaration under section 5(3) is in force;
- “exempt person” means a person that is exempted under section 87;
- “financial instruments” includes currencies, currency indices, interest rate instruments, interest rate indices, shares, share indices, a group or groups of such financial instruments and such other financial instruments as the Authority may by order prescribe;
- “financial year” has the same meaning as in the Companies Act;
- “foreign exchange market” has the meaning given to it in the First Schedule;
- “foreign exchange trading” has the meaning given to it in the Second Schedule;
- “futures contract” means 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 pursuant to terms

and conditions set forth in the business rules or practices of a futures exchange or a futures market; 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, such difference being determined in accordance with the business rules or practices of a futures exchange or futures market at which the contract is made,

and includes a futures option transaction;

“futures exchange” means a corporation that is approved by the Authority under section 8 as a futures exchange;

“futures market” has the meaning given to it in the First Schedule;

“futures option transaction” means a transaction which gives a person a right, acquired for a consideration, to buy or sell within a specified period of time a specified amount of commodity or a specified futures contract at a specified price in accordance with the business rules or practices of a futures exchange or a futures market at which the transaction is made;

“leveraged foreign exchange trading” has the meaning given to it in the Second Schedule;

“licensed person” means a corporation or an individual holding a licence granted under this Act;

“listing rules”, in relation to a corporation that maintains or provides, or proposes to maintain or provide, a stock market of a securities exchange, means rules governing or relating to —

- (a) the admission to the official list of the corporation, of corporations, governments, unincorporate bodies or other persons for the purpose of the quotation on the stock market of the corporation of securities issued, or made available by such corporations, governments, unincorporate bodies or other persons, or the removal from that official list and for other purposes;
- (b) the activities or conduct of corporations, governments, unincorporate bodies and other persons who are admitted to that list; or

- (c) the activities or conduct of corporations, governments, unincorporate bodies and other persons, the securities issued or made available by which are quoted on the stock market of the corporation,

whether those rules —

- (i) are made by the corporation or are contained in any of the constituent documents of the corporation; or
- (ii) are made by another person and adopted by the corporation;

“make a market” means, in relation to capital markets products, the activities of a person, where —

- (a) either through a facility, at a place or otherwise, the person regularly states the prices at which they propose to acquire or dispose of capital markets products on their own behalf; and
- (b) other persons have a reasonable expectation that they will be able to regularly effect transactions at the stated prices;

“member” means, except for the purposes of Part XI, a person who holds membership of any class or description of a securities exchange, futures exchange, or clearing house whether or not he holds any share in the share capital of the securities exchange, futures exchange, or clearing house;

“newspaper” has the same meaning as in the Newspaper and Printing Presses Act (Cap.206);

“officer” has the same meaning as in the Companies Act (Cap.50);

“overseas securities exchange” means a stock market outside Singapore which is regulated by a regulatory authority of a country or territory other than Singapore;

“overseas futures exchange” means a futures market outside Singapore which is regulated by a regulatory authority of a country or territory other than Singapore;

“principal” means a person whom a representative is in the direct employment of, acting for or by arrangement with, and for whom the representative carries out any regulated activity;

“providing custodial services for securities” has the meaning given to it in the Second Schedule;

“providing fund management” has the meaning given to it in the Second Schedule;

“providing securities financing” has the meaning given to it in the Second Schedule;

“public company” has the same meaning as in the Companies Act (Cap.50);

“quotation”, in relation to securities and in relation to a stock market of a securities exchange, includes the displaying or providing, on a stock market of the securities exchange, of information concerning —

(a) in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that stock market, those prices or that consideration;

(b) in a case where offers or invitations are made on that stock market, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices or for particular consideration, those prices or that consideration; or

(c) in any other case, the price at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities;

“record” means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceived form;

“recognised trading system provider” means a person that is recognised by the Authority under section 29;

“regulated activity” means an activity specified in the Second Schedule;

“related corporation” has the same meaning as in the Companies Act;

“relevant authority” —

(a) in relation to a member, means the securities exchange or futures exchange by which the member is recognised; and



(b) in relation to any other person, means the Authority;

“representative” means a person, by whatever name described, in the direct employment of, or acting for, or by arrangement with, a person who carries on a business in any regulated activity, who carries out for that person any such activity (other than work ordinarily performed by accountants, clerks or cashiers) whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise; and includes any director or officer of a corporation who performs for the corporation any of those services (whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise);

“securities” means —

(a) debentures, stocks, bonds or notes issued or proposed to be issued by a government;

(b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a corporation or body unincorporate;

(c) any right, option or derivative in respect of any such debentures, stocks, shares, bonds or notes;

(d) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —

(i) the value or price of any such debentures, stocks, shares, bonds or notes;

(ii) the value or price of any group of any such debenture, stocks, shares, bonds or notes; or

(iii) an index of any such debentures, stocks, shares bonds or notes; or

(e) any unit in a collective investment scheme,

but does not include —

(i) futures contracts;

(ii) bills of exchange;

(iii) promissory notes; or

(iv) certificates of deposit issued by a bank or finance company;

“securities exchange” means any corporation which has been approved by the Authority under section 8 as a securities exchange;

“Securities Industry Council” means the Securities Industry Council referred to in section 127;

“share” means a share in the share capital of a corporation and includes stock except where a distinction between stock and shares is express or implied;

“stock market” has the meaning given to it in the First Schedule;

“substantial shareholder” has the same meaning as in Division 4 of Part IV of the Companies Act;

“substantial shareholding” has the same meaning as in Division 4 of Part IV of the Companies Act;

“Take-over Code” means the “Singapore Code on Take-overs and Mergers” referred to in section 286(2)(a) which is published by the Authority under section 286(1);

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

“trust account” means a trust account established under Division 3 of Part V of this Act;

“unit trust scheme” means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property;

“voting share” has the same meaning as in the Companies Act.

(2) Where the name of a corporation referred to in this Act or its regulations is changed pursuant to the Companies Act, the change of name shall not affect the identity of that corporation or the application of the relevant provisions of this Act or any other written law to that corporation.

(3) Regulations may provide that, subject to any terms and conditions prescribed, all or any of the provisions of this Act —

(a) shall not have effect in relation to any specified person or to any person who is a member of a specified class of persons —

(i) who is or may be carrying on a business in any regulated activity by reason only of his doing

anything which is merely incidental to another business;

- (ii) who does not deal in securities or trade in futures contracts or carry out leveraged foreign exchange trading for or on behalf of any other person; or
  - (iii) who is carrying on a business in any regulated activity by reason only of the entering into by him of any specified transaction or class of transactions;
- (b) shall not have effect in relation to the representative of any person referred to in paragraph (a); or
  - (c) shall have effect in relation to any person referred to in paragraph (a) or (b) to such extent as is prescribed.
  - (d) shall not, or shall, have effect in relation to such other capital markets products or unit of account as may be prescribed and such order may provide for any necessary modification or adaptation to the relevant provisions.

### **Associated person**

**3.—(1)** A reference in this Act to a person associated with another person shall be construed as a reference to —

- (a) where the other person is a corporation —
  - (i) a director or secretary of the corporation;
  - (ii) a corporation that is related to the other person, as that term is used in the Companies Act (Cap.50); or
  - (iii) a director or secretary of such a related corporation;
- (b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied —
  - (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;
  - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or

(iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them,

subject to the proviso that in relation to a matter relating to shares in a corporation, a person may be an associate of the body and the body may be an associate of a person.

- (c) a person in concert with whom the other person is acting, or proposes to act, in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —
- (i) subject to subsection (2), a person who is a director of a corporation that carries on a business of dealing in securities and of which the other person is also a director;
  - (ii) subject to subsection (2), a person who is a director of a corporation of which the other person is a director, not being a corporation that carries on a business of dealing in securities; or
  - (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is, according to any subsidiary legislation made under this Act, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as referred to in paragraph (a), (b), (c), (d), (e) or (f), that last-mentioned person.

(2) Where, in proceedings under this Act, it is alleged that a person referred to in subsection (1)(d)(i) and (ii) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of subsection (1) (b), (c), (e) or (f) by reason only of one or more of the following:

- (a) that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;
- (b) that one of those persons, a customer, gives specific instructions to the other, whose ordinary business includes dealing in securities, to acquire shares on the customer's behalf in the ordinary course of that business;
- (c) that one of those persons has sent, or proposes to send, to the other a takeover offer, or has made, or proposes to make, offers under a takeover announcement, within the meaning of the Take-over Code published in accordance with section 286(1) of this Act, in relation to shares held by the other;
- (d) that one of those persons has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

(4) A reference to an associate, in relation to a holder of a capital markets services licence, is, if 2 or more persons constitute the holder of a capital markets services licence, a reference to an associate of any of those persons.

### **Interest in securities**

**4.—**(1) Subject to this section, a person has an interest in securities if he has authority (whether formal or informal or express or implied) to dispose of, or to exercise control over the disposal of, those securities.

(2) Where any property held in trust consists of or includes securities in which a person knows, or has reasonable grounds for believing, that he has an interest, he shall be deemed to have an interest in those securities.

(3) A person shall be deemed to have an interest in a security where a corporation has an interest in a security and —

- (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security; or
- (b) that person has a controlling interest in the corporation.

(4) Where a corporation has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a security and —

- (a) a person is;
- (b) the associates of a person are; or
- (c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation, that person shall be deemed to have an interest in that security.

(5) For the purposes of subsection (4), a person is an associate of another person if the first-mentioned person is —

- (a) a corporation which, by virtue of section 6 of the Companies Act (Cap.50), is deemed to be related to that other person;
- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (3);
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security;
- (d) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or

- (e) a corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.
- (6) A person shall be deemed to have an interest in a security in any one or more of the following circumstances:
- (a) where he has entered into a contract to purchase a security;
  - (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
  - (c) where he has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
  - (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.
- (7) Members, in relation to a corporation, has the same meaning given to it in section 19(6) of the Companies Act (Cap.50).
- (8) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (9) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.
- (10) There shall be disregarded —
- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
  - (b) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

- (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office;
  - (d) an interest of a company in its own securities being purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act (Cap.50); and
  - (e) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.
- (11) An interest in a security shall not be disregarded by reason only of —
- (a) its remoteness;
  - (b) the manner in which it arose; or
  - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.



## PART II

MARKETS, EXCHANGES, EXCHANGE HOLDING  
COMPANIES AND RECOGNISED TRADING SYSTEM  
PROVIDERS

*Division 1 — Stock and Futures Markets*

**Establishment of stock market, etc., in Singapore**

5.—(1) No person shall, subject to subsections (2) and (3), establish or operate or assist in establishing or operating or hold himself out as operating a stock market in Singapore unless that person is —

- (a) a securities exchange; or
- (b) a recognised trading system provider.

(2) Upon an application in writing to carry out the activities referred to in subsection (1) made by a holder of a capital markets services licence to deal in securities, the Authority may, if it considers those activities not to be the predominant business in the regulated activities to which the holder's licence relates, permit such a holder to engage in those activities subject to such requirements, conditions or restrictions as the Authority may think fit to impose.

(3) The Authority may, by notification in the *Gazette*, declare any stock market or class of stock market (whether in existence before or after 15th August 1986) to be exempt from the prohibition under subsection (1) subject to such requirements, conditions or restrictions as it may think fit to impose.

(4) 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 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 \$15,000 for every day or part thereof during which the offence continues after conviction.

(5) Any person who contravenes any of the requirements, conditions or restrictions specified under subsection (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Establishment of futures market, etc., in Singapore**

**6.**—(1) No person shall, subject to subsections (2) and (4), establish or operate or assist in establishing or operating or hold himself out as operating a futures market in Singapore unless that person is —

- (a) a futures exchange; or
- (b) a recognised trading system provider.

(2) Upon an application in writing to carry out the activities referred to in subsection (1) made by a holder of a capital markets services licence to trade in futures contracts, the Authority may, if it considers those activities not to be the predominant business in the regulated activities to which the holder's licence relates, permit such a holder to engage in those activities subject to such requirements, conditions or restrictions as the Authority may think fit to impose.

(3) The Authority may, by notification in the *Gazette*, declare any futures market or class of futures market (whether in existence before or after 15th August 1986) to be exempt from the prohibition under subsection (1) subject to such requirements, conditions or restrictions as it may think fit to impose.

(4) 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 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 \$15,000 for every day or part thereof during which the offence continues after conviction.

(5) Any person who contravenes any of the requirements, conditions or restrictions specified under subsection (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Outsourcing**

**6A.**—(1) A person operating an exempt market shall not outsource any operational function to any person unless it has —

- (a) obtained an undertaking from such person to enable the Authority to inspect its books as provided for in section 134(1)(b); and

(b) complied with such other requirements as the Authority may prescribe or impose.

(2) 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 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.

### **Power of the Authority to make regulations**

7.—(1) The Authority may, without prejudice to sections 3(3) and 295, make regulations relating to the approval or recognition of and requirements applicable to persons who establish or operate stock markets or futures markets.

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

- (a) the approval of a corporation as a securities exchange or futures exchange;
- (b) the recognition of an overseas securities exchange, overseas futures exchange or a corporation as a recognised trading system provider;
- (c) the requirements applicable to a securities exchange, futures exchange, recognised trading system provider, holder of a capital markets services licence granted permission under section 5(2) or 6(2) or person operating a stock market or futures market which is granted an exemption under section 5(4) or 6(4), in relation to the carrying on of the activities referred to in section 5(1) or 6(1).

(3) The Authority may, without prejudice to sections 2(3) and 295, make regulations applying to a licensed person referred to in section 5(2) and section 6(2) in respect of its carrying on of the activities referred to in section 5(1) and 6(1) respectively.

(4) Without affecting the generality of subsection (1), regulations made under this section may specify the requirements applying to recognised trading system providers to apply to the persons referred to in sections 5(2) and 6(2).

(5) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$200,000.

*Division 2 — Exchanges*

**Power of Authority to approve securities exchange or futures exchange**

8.—(1) Application by a corporation for approval as a securities exchange or futures exchange may be made to the Authority in such form and manner as the Authority may prescribe, accompanied by a non-refundable application fee which shall be paid in the manner specified by the Authority.

(2) A corporation shall, in connection with an application under subsection (1), provide such information as the Authority may require, in such form or verified in such manner as the Authority may direct by notice in writing.

(3) Without prejudice to section 7, the Authority may, in writing, approve a corporation as a securities exchange or futures exchange if it is satisfied that —

- (a) the corporation will ensure that, as far as reasonably practicable, there is an orderly, informed and fair market —
  - (i) in the case of a securities exchange, in securities traded through its facilities;
  - (ii) in the case of a futures exchange, in futures contracts traded through its facilities;
- (b) any risks associated with its business and operations are managed prudently;
- (c) the corporation, in discharging its obligations under subsection (a), will —
  - (i) act in the interests of the public, having particular regard to the interests of the investing public; and
  - (ii) ensure that the interests of the public prevail where they conflict with the interest of the securities exchange or futures exchange or the interests that it is required to serve under any other law;
- (d) the corporation will provide for, and enforce compliance by its members with, its business rules and, where appropriate, its listing rules;
- (e) the business rules and listing rules of the corporation make satisfactory provision —

- (i) for an orderly, informed and fair market in securities or futures contracts that are traded through its facilities; and
  - (ii) for the proper regulation and supervision of its members;
- (f) the corporation has sufficient financial, human and system resources to establish and operate fair and efficient markets, and to meet emergencies and security arrangements; and
- (g) the interests of the public will be served by approving the application.
- (4) Without limiting the generality of subsection (3)(e) above, such business or listing rules shall make provision —
- (i) for the exclusion from membership of persons who are not of good character and high business integrity;
  - (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the proposed securities or futures exchange;
  - (iii) with respect to the terms and conditions under which securities may be quoted on the stock market of the proposed securities exchange, or futures contracts may be listed for trading on the futures market of the proposed futures exchange, or with respect to the class or classes of securities or futures contracts that may be traded by members;
  - (iv) with respect to the terms and conditions governing dealings in securities or trading in futures contracts by members;
  - (v) with respect to fair and properly supervised floor trading practices;
  - (vi) with respect to adequate measures to prevent manipulation and excessive speculation;
  - (vii) for recording and publishing details of trading;
  - (viii) with respect to the clearing and other arrangements and the financial condition of the proposed securities or futures exchange, the clearing house of the proposed securities exchange or futures exchange and the members of the proposed securities exchange or futures exchange, such as

to provide reasonable assurance that all obligations arising out of securities or futures contracts traded on that proposed securities exchange or futures exchange will be met;

- (ix) with respect to the establishment of any compensation arrangement, or any other scheme or system accepted by the Authority, which would compensate customers who suffer pecuniary loss through the defalcation of a member, or any of its directors or employees or representatives, in respect of any money or other property that was entrusted to or received by a member, or a director or employee or representative, for or on behalf of any person or by reason that the member was trustee of the money or other property; and
- (x) generally for carrying on the business of the proposed securities exchange or futures exchange with due regard to the interests and protection of the public.

(5) The Authority may impose different requirements or give different directions with respect to different applications for approval as a securities or futures exchange.

(6) An applicant that is aggrieved by the refusal of the Authority to grant an approval under subsection (2) may, within 30 days of the decision, appeal to the Minister whose decision shall be final.

(7) The Authority shall give notice in the *Gazette* of any securities exchange or futures exchange that has been approved under this section.

### **Continuing obligation of securities exchange and futures exchange**

**9.—**(1) A securities exchange or futures exchange shall continue to satisfy the requirements set out in section 8(4) and in regulations made under section 7 in relation to the approval of a corporation as a securities exchange or futures exchange, as modified by the Authority under section 8(5) or by regulations made under section 7, if applicable.

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

## **Outsourcing**

**9A.—**(1) A securities exchange or futures exchange shall not outsource any operational function to any person unless it has —

- (a) obtained an undertaking from such person to enable the Authority to inspect its books as provided for in section 134(1)(b); and
- (b) complied with such other requirements as the Authority may prescribe or impose.

(2) 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 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.

## **Revocation of approval**

**10.—**(1) The Authority may revoke any approval granted under section 8 if —

- (a) the securities exchange or futures exchange ceases to operate its stock market or futures market;
- (b) the securities exchange or futures exchange is being wound up;
- (c) the securities exchange or futures exchange is failing or has failed to comply with the requirements that are applicable to it;
- (d) the securities exchange or futures exchange is failing or has failed to comply with any requirement imposed on it by or under this Act;
- (e) the recognised trading system provider is operating in a manner detrimental to the public interest;
- (f) any information provided to the Authority under section 8(2) was false or misleading in a material particular; or
- (g) the Authority deems fit upon the application of the securities or futures exchange.

(2) For the purposes of subsection (1)(a), a corporation shall be deemed to have ceased to operate its stock market or futures market if it has ceased to operate such market for more than 30 days unless it has obtained the approval of the Authority to do so, or unless it has ceased to operate such market by virtue of any

direction issued by the Authority under section 18 or section 20(1)(a).

(3) A securities exchange or futures exchange that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days of the decision, appeal to the Minister whose decision shall be final.

### **Exemption for approved securities exchange or futures exchange**

**11.** A securities exchange or futures exchange shall, subject to such requirements, conditions or restrictions that may be imposed by the Authority, not be required to hold a capital markets services licence in respect of any regulated activity which it provides as part of the exchange's business of operating a stock market or futures market in Singapore.

(2) Any person who contravenes any of the requirements, conditions or restrictions imposed under subsection (1) 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.

### **Exchanges to assist Authority**

**12.** A securities exchange or futures exchange shall provide such assistance to the Authority as the Authority reasonably requires for the performance of its functions and duties, including —

- (a) furnishing such returns; and
- (b) providing such books and other information,

relating to its business or in respect of such dealing in securities or trading in futures contracts or any other specified information as the Authority may require for the proper administration of this Act.

(2) A securities or futures exchange which, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable upon 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.

### **Immunity, etc.**

**13.—**(1) No liability shall be incurred by —

- (a) a securities exchange or futures exchange; or



(b) any person acting on behalf of a securities exchange or futures exchange, including —

(i) any member of the board of directors of the exchange; or

(ii) any member of any committee established by the exchange,

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 section 9 or regulations made under section 7.

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

#### **Exchange business rules have effect as contract**

**14.**—(1) The business rules of a securities exchange or futures exchange have effect, by force of this section, as a contract —

(a) between the exchange and each member; and

(b) between a member and each other member,

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

#### **Authority to be notified of amendments to business rules or listing rules**

**15.**—(1) Where an amendment is proposed to be made by way of rescission, substitution, alteration or addition to the business rules of a securities exchange or futures exchange, or the listing rules of a securities exchange, the securities exchange or futures exchange, as the case may be, shall forthwith forward written notice of such proposed amendment to the Authority giving the text of the amendment, the date on which it is proposed to be made and an explanation of the purpose of the amendment.

(2) If the notice required to be given under subsection (1) is not given at least 21 days before the making of the amendment, that amendment shall not come into force and effect.

(3) The Authority may, within 21 days after the receipt of a notice under subsection (1), by notice in writing to a securities

exchange or futures exchange, as the case may be, disallow, alter or supplement the whole or a specified part of the amendment in question and, thereupon, such whole or any specified part of the amendment, as the case may be, which is disallowed shall not come into force and effect, and which is altered or supplemented shall come into force and effect accordingly.

(4) The Authority may, at its discretion, by notice in writing to the securities exchange or futures exchange, extend the period specified in subsection (3), in which case the amendment shall not come into force until that extended period has expired.

(5) In addition to the power conferred upon the Authority under subsection (3), the Authority may of its own motion, by notice in writing to a securities exchange or futures exchange, alter or supplement the business rules of the securities exchange or futures exchange, or the listing rules of the securities exchange, or alter or supplement the terms and conditions that any securities or futures contracts are traded on the exchange, if it considers that such action is necessary for the protection of investors or to ensure fair dealing in a stock market or futures market.

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

**16.**—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a securities exchange or futures exchange, or listing rules of a securities exchange, as the case may be, fails to comply with, observe, enforce or give effect to any of those business rules or listing rules, as the case may be, the High Court may, on the application of the Authority, a securities exchange, a futures exchange or a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to that person concerning the compliance with, observance or enforcement of, or the giving effect to, those business rules or listing rules.

(2) For the purposes of subsection (1), a person being —

- (a) a corporation that has been admitted to the official list of a securities exchange and has not been removed from that official list; or
- (b) a person associated with a corporation that has been admitted to the official list of a securities exchange and has not been removed from that official list,

shall be deemed to be under an obligation to comply with, observe and give effect to the listing rules of that securities exchange to the extent to which those rules purport to apply to him.

### **Review of exchange's disciplinary action**

**17.**—(1) Where a securities exchange or futures exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the securities exchange or futures exchange, it shall forthwith inform the Authority in writing of the name of the member, the reason for, and nature of, the action taken, the amount of any fine and the period of any suspension.

(2) The Authority may review any disciplinary action taken by a securities exchange or futures exchange under subsection (1) and may affirm, modify or set aside the decision of the securities exchange or futures exchange after giving the member and the securities exchange or futures exchange an opportunity to be heard.

(3) Nothing in this section shall preclude the Authority, in any case where a securities exchange or futures exchange fails to act against a member, from itself suspending, expelling or otherwise disciplining a member of the securities exchange or futures exchange, but before so doing the Authority shall give the member and the securities exchange or futures exchange an opportunity to be heard.

(4) Any person who is aggrieved by the decision of a securities exchange or futures exchange or the Authority under this section may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

### **Power to issue written directions to an exchange**

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

- (a) for ensuring fair and orderly stock and futures markets;
- (b) for ensuring the integrity of, and proper management of systemic risks in, the stock and futures markets, or
- (c) in the interest of the public or for the protection of investors,

issue written directions either of a general or specific nature to a securities exchange or futures exchange.

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

- (a) trading or the termination of trading on or through the facilities of that securities exchange or futures exchange or with respect to any security quoted on that securities exchange, or futures contract listed for trading on that futures exchange;
- (b) the manner in which a securities or futures exchange carries on its business, including the manner of reporting off-market purchases; or
- (c) any other matters which the Authority considers necessary for the effective administration of this Act,

and the exchange shall comply with any such written direction.

(3) A securities or futures exchange which, without reasonable excuse, contravenes a written direction issued under subsection (1), 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 of \$10,000 for every day or part thereof during which the offence continues after conviction.

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

(5) A securities or futures exchange that is aggrieved by any written direction of the Authority under subsection (1) may, within 30 days of the date of the Authority's written direction, 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 or a securities exchange under this section shall continue to have force and effect until such time as the Minister makes a decision on the appeal.

(7) Where the Authority is satisfied that an officer of a securities exchange or futures exchange has wilfully contravened this Act or the business rules, or where appropriate, the listing rules, of a securities exchange or futures exchange or has, without reasonable justification or excuse, failed to enforce compliance with such provisions by a member of the securities exchange or futures exchange or a person associated with that member, the Authority may, if it thinks it is necessary in the public interest or for the protection of investors, and after giving the officer, an opportunity of being heard, direct by notice in writing the securities exchange or futures exchange to remove from office or employment the

executive officer, and the securities exchange or futures exchange shall comply with the direction; or the Authority may instead censure the officer.

### **Power of Authority in the securities market**

**19.**—(1) Without prejudice to the generality of section 18, where the Authority forms the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a corporation on the stock market of a securities exchange in order to protect persons buying or selling the securities or in the interests of the public, the Authority may give notice in writing to the securities exchange stating that it has formed that opinion and setting out the reasons for the formation of that opinion.

(2) If, after the receipt of the notice given under subsection (1), the securities exchange does not take action to prevent trading in the securities to which the notice relates on the stock market of the securities exchange and the Authority is still of the opinion that it is necessary to prohibit trading in those securities on that stock market, the Authority may, by notice in writing to the securities exchange, prohibit trading in those securities on that stock market during such period, not exceeding 14 days, as is specified in the notice.

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

- (a) at the same time send a copy of the notice to the corporation 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 securities exchange.

(4) Any person who is aggrieved by any action taken by the Authority or a securities exchange under this section may, within 30 days of the action, appeal to the Minister whose decision shall be final and shall not be called in question in any court.

(5) Notwithstanding the lodging of an appeal under subsection (4), any action taken by the Authority or a securities exchange under this section shall continue to have force and effect until such time as the Minister makes a decision on the appeal.

(6) A securities exchange which permits trading in securities on the stock market of the securities 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 of \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Power of Authority in the futures market**

**20.**—(1) Whenever the Authority has reason to believe that an emergency exists, the Authority may direct a futures exchange to take such action as it considers necessary to maintain or restore orderly trading in, or liquidation of, any futures contract or any class of futures contracts including but not limited to —

- (a) terminating or suspending trading on a futures exchange;
- (b) confining trading to liquidation of futures contracts;
- (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 contracts are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in futures contracts or any class of futures contracts;
- (i) requiring additional margins for any contracts; and
- (j) modifying or suspending any of the business rules of a futures exchange,

and the exchange shall comply with that direction.

(2) Where a futures 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 itself take action to set emergency margin levels in any futures contract, or class of futures contracts, or to fix limits that may apply to market positions acquired in good faith prior to the date of the Authority's action or such other action, including but not limited to those specified in subsection (1), as the Authority thinks are necessary to maintain or

restore orderly trading in or liquidation of futures contracts or any class of futures contracts.

(3) In this section, “emergency” means, in addition to threatened or actual market manipulations and corners, any act of government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity or any other undesirable situations or practices which in the opinion of the Authority constitutes an emergency.

(4) Without prejudice to subsection (1), where a futures exchange exercises its powers under its rules to take emergency action, the Authority may modify such emergency action, including but not limited to the setting aside of that emergency action.

(5) Any person who is aggrieved by any action taken by the Authority or a futures exchange under this section may, within 30 days of the action, appeal to the Minister whose decision shall be final and shall not be called in question in any court.

(6) Notwithstanding the lodging of an appeal under subsection (5), any emergency action taken by the Authority or a futures exchange under this section shall continue to have force and effect until such time as the Minister makes a decision on the appeal.

### **Power to approve futures contracts**

**21.—**(1) No futures exchange shall list or de-list any futures contract on its exchange or permit the trading of any futures contract on the futures market established or operated by the exchange without the prior approval of the Authority.

(2) The Authority may grant approval for the listing of a futures contract on a futures exchange or for the trading of any futures contract on the futures market established or maintained by the exchange subject to such conditions as the Authority may think fit.

(3) 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 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 \$15,000 for every day or part thereof during which the offence continues after conviction.

(4) Any person who contravenes any of the conditions specified 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.

**Fixing of position and trading limits in futures contracts**

**22.**—(1) For the purpose of diminishing or eliminating, or preventing excessive speculation in any commodity under a futures contract, the Authority or a futures exchange 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 on or subject to the business rules of a futures 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 transactions or positions which are bona fide hedging transactions or positions as defined by a futures 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 on or subject to the business rules of a futures exchange, any amount of a commodity in excess of the trading limits fixed for one business day, or other stated period set by the Authority or a futures exchange; or

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

(6) Nothing in this section shall preclude the Authority or a futures exchange from fixing different trading or position limits for different futures contracts or delivery months or for different days remaining until the last day of trading in a contract or different trading limits for the purposes of subsection (5), or from exempting transactions under this section.



### **Powers of Authority in respect of auditors**

**23.**—(1) If an auditor, in the course of the performance of his duties as an auditor of a securities exchange or futures exchange, becomes aware —

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the securities exchange or futures 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, including irregularities that may affect or jeopardise the funds or property of investors in securities or futures contracts,

he 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) Notwithstanding the provisions of the Companies Act (Cap.50), the Authority may impose all or any of the following additional duties on an auditor of a securities exchange or futures 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 securities exchange or futures 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 referred to in paragraph (b) or (c),

and the auditor shall carry out such additional duties.

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

(6) For the avoidance of doubt, sections 207 and 208 of the Companies Act shall, to the extent to which they may be applicable, apply to the discharge of an auditor's additional duties under subsection (4).

### *Division 3*

#### *Exchange Holding Companies*

#### **Power to approve exchange holding company**

**24.**—(1) The Authority may approve a corporation as an exchange holding company if it is satisfied that the interests of the public will be served by the granting of its approval.

(2) An applicant that is aggrieved by the refusal of the Authority to approve an application under subsection (1) may, within 30 days of the decision, appeal to the Minister whose decision shall be final and shall not be called in question in any court.

#### **Listing of exchange holding company on securities exchange**

**25.**—(1) The securities of an exchange holding company may be listed or quoted on a securities exchange if the exchange holding company has entered into such arrangements as the Authority may require —

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

and the exchange holding company shall comply with such arrangements.

(2) The listing rules of the securities exchange shall be deemed to provide for the Authority, instead of the securities exchange, to make decisions and to take action (or require the securities exchange to take action on the Authority's behalf) on the following matters:

- (a) the admission to or removal from the securities exchange's official list of the exchange holding company; and

- (b) granting, stopping or suspending the quotation of securities of the exchange holding company on the securities exchange.
- (3) The Authority may, by notice in writing —
- (a) modify the listing rules of the securities exchange for the purpose of applying to the listing, quotation or trading of the securities of the exchange holding company; and
  - (b) exempt the exchange holding company from any listing rule of the securities exchange.

**Power to issue written directions to exchange holding company**

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

- (a) for ensuring fair and orderly stock and futures markets;
- (b) for ensuring the integrity of, and proper management of systemic risks in, the stock and futures markets, or
- (c) in the interest of the public or for the protection of investors,

issue written directions either of a general or specific nature to an exchange holding company.

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

- (a) the requirement for the prior approval of the Authority in respect of any proposed amendment, whether by way of alteration or addition, to the business rules of the exchange holding company;
- (b) the corporate governance of the exchange holding company;
- (c) the inspection by the Authority or by any person appointed by the Authority of the books, accounts, documents, records and affairs of the exchange holding company;
- (d) the production of the books, accounts, documents and records of the exchange holding company and the provision of such information, assistance and facilities as may be required by the Authority or by any person appointed by the Authority;

- (e) the management by the exchange holding company of any of its subsidiaries that carries on the business of a securities exchange, futures exchange or clearing house, whether such business forms the whole or part of such subsidiary's undertaking; and
- (f) any other matters which the Authority considers necessary for the effective administration of this Act,

and the exchange holding company shall comply with any such direction.

(3) Any written direction issued under subsection (2) may impose requirements or duties on any officer or employee or any class of officers or employees of the exchange holding company in relation to conduct or matters connected with the exchange holding company or any of its subsidiaries referred to in subsection (2)(e).

(4) If the exchange holding company or any of its officers or employees, without reasonable excuse, fails to comply with any written direction issued under subsection (1), the company, officer or employee 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 of \$10,000 for every day or part thereof during which the offence continues after conviction.

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

(6) Without prejudice to subsection (3), where the Minister is satisfied that the exchange holding company or any of its officers or employees has, without reasonable excuse, failed to comply with any written direction issued under subsection (1), the Minister may, on the application of the Authority, grant an injunction directing the company or any of its officers or employees to do or refrain from doing a specific act.

(7) The Minister may revoke, vary or discharge an order made under subsection (6) or suspend the operation of such an order.

(8) If the exchange holding company or any of its officers or employees is aggrieved by any written direction of the Authority under subsection (1), the exchange holding company may, within 30 days of the date of issue of the Authority's written direction, appeal to the Minister.

## **Outsourcing**

**26A.**—(1) An exchange holding company shall not outsource any operational function to any person unless it has —

(a) obtained an undertaking from such person to enable the Authority to inspect its books as provided for in section 134(1)(b); and

(b) complied with such other requirements as the Authority may prescribe or impose.

(2) 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 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.

**Control of substantial shareholdings in exchange holding company**

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

(2) The Authority may grant its approval referred to in subsection (1) subject to such conditions as it considers appropriate to impose.

(3) Without prejudice to subsection (6), the Authority may, for the purposes of securing compliance with subsection (1) or any condition imposed under subsection (2), by notice in writing direct the transfer or disposal of all or any of the exchange holding company's shares in which the substantial shareholder has or has had an interest.

(4) Any person who is in receipt of a direction given by the Authority under subsection (3) shall transfer or dispose of the number of shares of the exchange holding company which are the subject of such direction, and until such transfer or disposal —

(a) no voting rights shall be exercisable in respect of that number of shares;

(b) no shares of the exchange holding company shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of that number of shares; and

- (c) except in a liquidation of the exchange holding company, no payment shall be made by the exchange holding company of any sums (whether by way of dividends or otherwise) in respect of that number of shares.

(6) Any person who contravenes subsection (1) or (4) or who fails to comply with any condition imposed by the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

### **Powers of Authority in respect of auditors**

**28.**—(1) If an auditor, in the course of the performance of his duties as an auditor of an exchange holding company, becomes aware —

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the exchange 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, including irregularities that may affect or jeopardise the funds or property of investors in securities or futures contracts,

he 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) Notwithstanding the provisions of the Companies Act (Cap.50), the Authority may impose all or any of the following additional duties on an auditor of an exchange 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 exchange 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 referred to in paragraph (b) or (c),

and the auditor shall carry out such additional duties.

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

(6) For the avoidance of doubt, sections 207 and 208 of the Companies Act shall, to the extent to which they may be applicable, apply to the discharge of an auditor's additional duties under subsection (4).

#### *Division 4*

##### *Recognised Trading System Providers*

#### **Power of Authority to recognise trading system providers**

**29.**—(1) Application by an overseas securities exchange, an overseas futures exchange or a corporation for recognition as a recognised trading system provider may be made to the Authority in such form and manner as the Authority may prescribe, accompanied by a non-refundable application fee which shall be paid in the manner specified by the Authority.

(2) An applicant shall, in connection with an application under subsection (1), provide such information as the Authority may require, in such form or verified in such manner as the Authority may direct by notice in writing.

(3) Without prejudice to section 7, the Authority may, in writing, recognise an applicant as a recognised trading system provider if it is satisfied that —

- (a) the applicant will ensure that, as far as reasonably practicable, there is an orderly, informed and fair market in securities or futures contracts traded through its facilities;
- (b) any risks associated with its business and operations are managed prudently;

- (c) the applicant, in discharging its obligations under subsection (a), will —
    - (i) act in the interests of the public, having particular regard to the interests of the investing public; and
    - (ii) ensure that the interests of the public prevail where they conflict with the interest of the recognised trading system or the interests that it is required to serve under any other law;
  - (d) where appropriate, the applicant shall provide for and enforce compliance by its members with, its business rules and its listing rules;
  - (e) where appropriate, the business rules and listing rules of the applicant make satisfactory provision —
    - (i) for an orderly, informed and fair market in securities or futures contracts that are traded through its facilities; and
    - (ii) for the proper regulation and supervision of its members;
  - (f) the applicant has sufficient financial, human and system resources to establish and operate fair and efficient markets, and to meet emergencies and security arrangements; and
  - (g) the interests of the public will be served by approving the application.
- (4) Without limiting the generality of subsection (3)(e) above, such business or listing rules shall make provision —
- (i) for the exclusion from membership of persons who are not of good character and high business integrity;
  - (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the proposed recognised electronic trading provider;
  - (iii) with respect to the terms and conditions under which securities may be quoted on the stock market, or futures contracts may be listed for trading on the proposed recognised trading system provider, or with respect to the class or classes of securities or futures contracts that may be traded by members;



- (iv) with respect to the terms and conditions governing dealings in securities or trading in futures contracts by members;
- (v) with respect to fair and properly supervised floor trading practices;
- (vi) with respect to adequate measures to prevent manipulation and excessive speculation;
- (vii) for recording and publishing details of trading;
- (viii) with respect to the clearing and other arrangements and the financial condition of the proposed recognised trading system provider, the clearing house of the proposed recognised trading system provider and the members of the proposed recognised trading system provider, such as to provide reasonable assurance that all obligations arising out of securities or futures contracts traded on that proposed recognised trading system provider will be met;
- (ix) with respect to the establishment of any compensation arrangement, or any other scheme or system accepted by the Authority, which would compensate customers who suffer pecuniary loss through the defalcation of a member, or any of its directors or employees or representatives, in respect of any money or other property that was entrusted to or received by a member, or a director or employee or representative, for or on behalf of any person or by reason that the member was trustee of the money or other property; and
- (x) generally for carrying on the business of the proposed securities exchange or futures exchange with due regard to the interests and protection of the public.

(5) The Authority may impose different requirements or give different directions with respect to different applications for recognition as a recognised trading system provider.

(6) An applicant that is aggrieved by the refusal of the Authority to grant an approval under subsection (2) may, within 30 days of the decision, appeal to the Minister whose decision shall be final.

(7) The Authority shall give notice in the *Gazette* of any recognised trading system provider that has been recognised under this section.

### **Overseas securities exchange and futures exchange**

**30.**—(1) An application for recognition under section 29 by an overseas securities exchange or an overseas futures exchange must contain the address of a place in Singapore for the service on the applicant, of notices or other documents required or authorised to be served on it under this Act.

(2) Without prejudice to section 29, to recognise an overseas securities exchange or overseas futures exchange as a recognised trading system provider, the Authority may additionally require to be satisfied that —

- (a) investors are afforded protection equivalent to what they would be afforded if the applicant were required to comply with the requirements in section 29(3);
- (b) there are adequate procedures for dealing with a person who is unable, or likely to become unable to meet his obligations in respect of one or more market contracts connected with applicant;
- (c) the applicant is able and willing to co-operate with the Authority in the sharing of information and other ways;
- (d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated; and
- (e) adequate arrangements exist for co-operation between the applicant and a securities or futures exchange in respect of the supervision of any person which is permitted to trade directly in the markets established or maintained by both the applicant and the securities or futures exchange.

(3) In considering whether it is satisfied as to the requirements mentioned in subsection (2)(a) and (b), the Authority may have regard to —

- (a) the relevant law and practice of the country or territory in which the applicant's head office is situated;
- (b) the rules and practices of the applicant.

### **Notification – overseas securities exchange and futures exchange**

**31.**—(1) At least once a year, every recognised trading system provider which is an overseas securities exchange or an overseas futures exchange shall provide the Authority with a report.

(2) The report must contain a statement as to whether any events have occurred which are likely to affect the Authority's assessment of whether it has satisfied the requirements set out in section 29 and 30.

(3) The report must also contain such information as may be specified by the Authority.

### **Continuing obligation of recognised trading system provider**

**32.**—(1) A recognised trading system provider shall continue to satisfy the requirements set out in section 29(3), regulations made under section 7 and, if applicable, section 30(2) in relation to the recognition of an applicant as a recognised trading system provider, as modified by the Authority under section 29(5) or by regulations made under section 7.

(2) A recognised trading system provider which contravenes subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding \$100,000 and in the case of a continuing offence, to a fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Revocation of recognition**

**33.**—(1) The Authority may revoke any recognition granted under section 29 if —

- (a) the recognised trading system provider ceases to operate its stock market or futures market;
- (b) the recognised trading system provider is being wound up;
- (c) the recognised trading system provider is failing or has failed to comply with the conditions that are applicable to it;
- (d) the recognised trading system provider is failing or has failed to comply with any requirement imposed on it by or under this Act;
- (e) the recognised trading system provider is operating in a manner detrimental to the public interest;
- (f) any information provided to the Authority under section 29 was false or misleading in a material particular; or
- (g) the Authority deems fit upon the application of the recognised trading system provider.

(2) For the purposes of subsection (1)(a), a recognised trading system provider shall be deemed to have ceased to operate its stock market or futures market if it has ceased to operate such market for more than 30 days unless it has obtained the approval of the Authority to do so, or unless it has ceased to operate such market by virtue of any direction issued by the Authority under section 18 or section 20(1)(a).

(3) A recognised trading system provider that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days of the decision, appeal to the Minister whose decision shall be final.

### **Exemption for recognised trading system provider**

**34.**—(1) A recognised trading system provider, shall, subject to such requirements, conditions or restrictions that may be imposed by the Authority, not be required to hold a capital markets services licence in respect of any regulated activity which it provides as part of its business of operating a stock market or futures market in Singapore.

(2) Any person who contravenes any of the requirements, conditions or restrictions imposed under subsection (1) 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.

### **Outsourcing**

**34A.**—(1) A recognised trading system provider shall not outsource any operational function to any person unless it has —

- (a) obtained an undertaking from such person to enable the Authority to inspect its books as provided for in section 134(1)(b); and
- (b) complied with such other requirements as the Authority may prescribe or impose.

(2) 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 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.

### **Recognised trading system provider to assist Authority**

**35.**—(1) A recognised trading system provider shall provide such assistance to the Authority as the Authority reasonably requires for the performance of its functions and duties, including —

- (a) furnishing such returns; and
- (b) providing such books and other information,

relating to its business or in respect of such dealing in securities or trading in futures contracts or any other specified information as the Authority may require for the proper administration of this Act.

(2) A recognised trading system provider which, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable upon 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.

### **Power to issue written directions to a recognised trading system provider**

**36.**—(1) The Authority may, if it thinks it necessary expedient —

- (a) for ensuring fair and orderly stock and futures markets;
- (b) for ensuring the integrity of, and proper management of systemic risks in, the stock and futures markets, or
- (c) in the interest of the public or for the protection of investors,

issue written directions either of a general or specific nature to a recognised trading system provider.

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

- (a) trading on or through the facilities of that recognised trading system provider;
- (b) the manner in which a recognised trading system provider carries on its business; or
- (c) any other matter which the Authority considers necessary for the effective administration of this Act,

and the recognised trading system provider shall comply with any such written direction.

(3) A recognised electronic trading system provider which, without reasonable excuse, fails or refuse to comply with a written direction issued under subsection (1), 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 of \$10,000 for every day or part thereof during which the offence continues after conviction.

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

(5) A recognised trading system provider that is aggrieved by any written direction of the Authority under subsection (1) may, within 30 days of the date of the Authority's written direction, appeal to the Minister.

### **Power to approve futures contracts**

**37.**—(1) A recognised trading system provider shall not permit the trading of any futures contract on the futures market established or operated by the recognised trading system provider without the prior approval of the Authority.

(2) The Authority may grant approval for the trading of any futures contract on the futures market established or operated by a recognised trading system provider subject to such conditions as the Authority may think fit.

(3) 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 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 \$15,000 for every day or part thereof during which the offence continues after conviction.

(4) Any person who contravenes any of the conditions specified under in this section 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.

### **Powers of Authority in respect of auditors**

**38.**—(1) If an auditor, in the course of the performance of his duties as an auditor of a recognised trading system provider, becomes aware —

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the recognised trading system provider 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, including irregularities that may affect or jeopardise the funds or property of investors in securities or futures contracts,

he 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) Notwithstanding the provisions of the Companies Act (Cap.50), the Authority may impose all or any of the following additional duties on an auditor of a recognised trading system provider:

- (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 recognised trading system provider;
- (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 referred to in paragraph (b) or (c),

and the auditor shall carry out such additional duties.

(5) The recognised trading system provider shall remunerate the auditor in respect of the discharge by him of all or any of the additional duties referred to in subsection (4).

(6) For the avoidance of doubt, sections 207 and 208 of the Companies Act shall, to the extent to which they may be applicable, apply to the discharge of an auditor's additional duties under subsection (4).

### **Power of Authority to prescribe application of certain provisions in Division 2**

**39.** The Authority may, if thinks fit, apply sections 13, 14, 15, 16, 17, 19, 20 and 22 to a recognised trading system provider, in which case these provisions and any prescribed penalty shall with the necessary modifications apply to a recognised trading system provider.

### **Application of provisions to exempt corporation**

**40.** The Authority, may, if it thinks fit, apply any of the provisions in Division 2 to any corporation exempted under sections 5(2), 5(4), 6(2) and 6(4).



## PART III

### *Division 1 - Clearing Houses*

#### **Establishment of clearing house**

**41.**—(1) No person shall establish or operate or assist in establishing or operating or hold himself out as operating a clearing facility in Singapore unless the person is a clearing house.

(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 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 \$15,000 for every day or part thereof during which the offence continues after conviction.

#### **Power of Authority to approve clearing house**

**42.**—(1) A corporation may apply to the Authority for approval to be a clearing house in such form and manner as may be prescribed and the corporation shall, in connection with that application, provide such information as the Authority may require.

(2) The Authority may, in writing, approve a corporation as a clearing house if it is satisfied that —

- (a) the business rules of the corporation make satisfactory provision —
  - (i) for the registration of, or transfers of futures contracts or securities;
  - (ii) for the settlement of transactions involving securities;
  - (iii) for guaranteeing to its members the performance of futures contracts;
  - (iv) for the expulsion, suspension or disciplining of members for any contravention of the business rules of the proposed clearing house;
  - (v) for the taking of proceedings or other action if a member 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; and
- (b) the interests of the investing public will be served by approving the application.

(3) Any person who is aggrieved by the refusal of the Authority to grant an approval under subsection (2) may, within 30 days of the decision, appeal to the Minister whose decision shall be final.

### **Revocation of approval**

**43.**—(1) The Authority may, in writing, revoke any approval granted under section 42 to a corporation if —

- (a) the corporation ceases to operate as a clearing facility;
- (b) the corporation is being wound up;
- (c) the corporation is operating in a manner detrimental to the public interest; or
- (d) any information provided to the Authority under section 42(1) was false or misleading in a material particular.

(2) For the purposes of subsection (1)(a), a corporation shall be deemed to have ceased to operate as a clearing house if it has ceased to operate for more than 30 days unless it has obtained the prior approval of the Authority to do so, or unless it has ceased to operate by virtue of any written direction issued by the Authority under section 52.

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

### **Effect of revocation**

**44.** A revocation of approval granted to a person under section 42 shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into by the person relating to the provision of clearing facilities, whether the agreement, transaction or arrangement was entered into before or after the revocation of the approval; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

### **Exemption for clearing house**

**45.**—(1) A clearing house shall not be required to hold a capital markets services licence in respect of any regulated activity which it provides in the course of, or in connection with, the operation of a clearing facility.

(2) Notwithstanding Part IV of the Companies Act (Cap.50), a clearing house shall not be deemed to be —

- (a) making an offer of securities for subscription or purchase;  
or
- (b) making an invitation to subscribe for or purchase securities,

in the course of, or in connection with, the operation of a clearing facility.

(3) The clearing house shall not, for the purposes of this Act, be regarded as having a relevant interest in a share or security merely because it operates a clearing facility.

### **Duties of clearing house**

**46.**—(1) It shall be the duty of a clearing house to ensure —

- (a) so far as is reasonably practicable, that there are orderly, fair and expeditious clearing arrangements for securities and futures contracts cleared through its facilities; and
- (b) that risks associated with its business and operations are managed prudently.

(2) In discharging its duties under subsection (1), a clearing house shall —

- (a) act in the interests of the public, having particular regard to the interests of the investing public; and
- (b) ensure that the interests of the public prevail where they conflict with the interests of the clearing house or the interests it is required to serve under any other law.

(3) A clearing house shall operate its clearing facility in accordance with its business rules.

(4) A clearing house shall ensure that its members comply with its business rules.

(5) The Authority may, by notice in writing served on a clearing house, require the clearing house to provide to the Authority, within such period as the Authority may specify in the notice —

- (a) such books, accounts and records kept by it in connection with or for the purposes of its business or in respect of any clearing arrangements for futures contracts or securities; and

- (b) such other information relating to its business or any clearing arrangements for futures contracts or securities as the Authority thinks fit,

and the clearing house shall comply with the requirement.

(6) A clearing house served with a notice under subsection (5) which, without reasonable excuse, contravenes or fails to comply with the notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(7) A clearing house shall immediately notify the Authority if it becomes aware of a financial irregularity or other matter which in the opinion of the clearing house may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet his legal obligations.

(8) A clearing house shall at all times provide and maintain to the satisfaction of the Authority —

- (a) adequate and properly equipped premises;
- (b) competent personnel; and
- (c) automated systems with adequate capacity and facilities to meet contingencies or disasters, security arrangements and technical support,

for the conduct of its business.

(9) For the purposes of subsection (8), “contingencies or disasters” includes events such as technical complications occurring within the automated systems.

### **Outsourcing**

**46A.**—(1) A clearing house shall not outsource any operational function in respect of its regulated activities to any person unless it has —

- (a) obtained an undertaking from such person to enable the Authority to inspect its books in respect of such regulated activity as provided for in section 134(1)(b); and
- (b) complied with such other requirements as the Authority may prescribe or impose.

(2) 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 and in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof which the offence continues after conviction.

**Business rules of clearing house have effect as contract**

**47.**—(1) The business rules of a clearing house shall operate as a binding contract —

- (a) between the clearing house and each issuer;
- (b) between the clearing house and each member;
- (c) between each issuer and each member; and
- (d) between a member and any other member,

under which each of the persons mentioned in paragraphs (a) to (d) agrees to observe and perform the provisions of the business rules of the clearing house as 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 handled by the clearing house.

**Authority to be notified of amendments of business rules**

**48.**—(1) Where an amendment is proposed to be made by way of rescission, substitution, alteration or addition to the business rules of a clearing house, the clearing house shall forthwith forward written notice of such proposed amendment to the Authority, giving the text of the amendment, the date on which it is proposed to be made and an explanation of the purpose of the amendment.

(2) If the notice required to be given under subsection (1) is not given at least 21 days before the making of the amendment, that amendment shall not come into force.

(3) The Authority may, within 21 days after the receipt of a notice under subsection (1) by notice in writing to a clearing house, disallow, alter or supplement the whole or a specified part of the amendment in question and, whereupon —

- (a) such whole or any specified part of the amendment, as the case may be, which is disallowed shall not come into force; and
- (b) which is altered or supplemented shall come into force.

(4) The Authority may, at its discretion, by notice in writing to the clearing house extend the period specified in subsection (3), in which case the amendment shall not come into force until that extended period has expired.

(5) In addition to the power conferred upon the Authority under subsection (3), the Authority may of its own motion, by notice in writing to a clearing house, alter or supplement the business rules of the clearing house, or alter or supplement the terms and conditions of any futures contract or securities cleared or settled by the clearing house, if it considers that such action is necessary for the protection of investors or to ensure fair dealing in a securities or futures market.

### **Power of court to order observance or enforcement of business rules**

**49.** Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a clearing house, fails to comply with, observe, enforce or give effect to any of those business rules, the High Court may, on the application of the Authority, a clearing house or a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to that person concerning the compliance with, observance or enforcement of, or the giving effect to, those business rules.

### **Clearing house to assist Authority**

**50.** A clearing house shall provide such assistance to the Authority, or to a person acting on behalf of, or with the authority of, the Authority, as the Authority reasonably requires for the performance of its functions and duties, including the furnishing of such returns and providing such information relating to its business or in respect of any dealing in securities or trading in futures contracts or any other specified information as the Authority may require for the proper administration of this Act.

### **Review of clearing house's disciplinary action**

**51.—(1)** Where a clearing house reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the clearing house, it shall forthwith inform the Authority in writing of the name of the member, the reason for, and nature of, the action taken, the amount of any fine and the period of any suspension.

(2) The Authority may, of its own accord, or on application by an aggrieved person, review any disciplinary action taken by a

clearing house under subsection (1) and may affirm, modify or set aside the decision of the clearing house after giving the member and the clearing house an opportunity to be heard.

(3) Nothing in this section shall preclude the Authority, in any case where a clearing house fails to act against a member, from suspending, expelling or otherwise disciplining a member of the clearing house, but before so doing, the Authority shall give the member and the clearing house an opportunity to be heard.

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

### **Power to issue written directions to a clearing house**

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

- (a) for ensuring the fair and orderly conduct of stock and futures markets;
- (b) for ensuring the integrity of, and proper management of systemic risks in, the stock and futures markets, or
- (c) in the interest of the public or section of the public or for the protection of investors;

issue written directions either of a general or specific nature to a clearing house.

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

- (a) the clearing or settlement of futures contracts or securities and the making of adjustments of contractual obligations arising out of those futures contracts or securities;
- (b) the manner in which a clearing house carries on its business; and
- (c) any other matters which the Authority considers necessary for the effective administration of this Act.

(3) A clearing house which, without reasonable excuse, fails or refuses to comply with a written direction issued under subsection (1) that is applicable to it 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.

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

(5) A clearing house that feels aggrieved by any written direction of the Authority under subsection (1) may, within 30 days of the date of the Authority's written direction, appeal to the Minister whose decision shall be final.

(6) Where the Authority is satisfied that an executive officer of a clearing house has wilfully contravened this Act or the business rules of a clearing house or has, without reasonable justification or excuse, failed to enforce compliance with this Act by a member of the clearing house or a person associated with that member, the Authority may, if it thinks it is necessary in the public interest or for the protection of investors, and after giving the executive officer an opportunity of being heard —

- (a) direct by notice in writing the clearing house to remove from office or employment the executive officer; or
- (b) reprimand the executive officer.

(7) A clearing house which, without reasonable excuse, fails or refuses to comply with a written notice issued under subsection (6)(b) that is applicable to it 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.

### **Power of Authority in futures market**

**53.**—(1) Whenever the Authority has reason to believe that an emergency exists, the Authority may direct a clearing house to take such action as it considers necessary to maintain or restore orderly trading in, or liquidation of, any futures contract or any class of futures contracts including but not limited to —

- (a) ordering the liquidation of all positions or part thereof or the reduction in such positions;
- (b) altering conditions of delivery;
- (c) fixing the settlement price at which contracts are to be liquidated;
- (d) requiring additional margins for any contracts; and



- (e) modifying or suspending any of the business rules of a clearing house,

and the clearing house shall comply with that direction.

(2) Where a 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 itself take action to set emergency margin levels in any futures contract, or class of futures contracts, or to fix limits that may apply to market positions acquired in good faith prior to the date of the Authority's action or such other action, including but not limited to those specified in subsection (1), as the Authority thinks are necessary to maintain or restore orderly trading in or liquidation of futures contracts or any class of futures contracts.

(3) In this section, "emergency" means, in addition to threatened or actual market manipulations and corners, any act of government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity, or any other undesirable situations or practices which in the opinion of the Authority constitutes an emergency.

(4) Without prejudice to subsection (1), where a clearing house exercises its powers under that subsection, the Authority may modify such emergency action, including but not limited to the setting aside of that emergency action.

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

(6) Notwithstanding the lodging of an appeal under subsection (5), any emergency action taken by the Authority or a clearing house 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 emergency action, taken by the Authority or a clearing house, that is the subject of an appeal and such modified emergency action shall have effect.

#### **Additional powers of Authority in respect of auditors**

**54.**—(1) If an auditor, in the course of the performance of his duties as an auditor of the clearing house, becomes aware —

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the clearing house 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 have or may have a material effect upon the accounts, including irregularities that affect or may affect or jeopardise the funds or property of investors in futures contracts or securities,

he 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) Notwithstanding the provisions of the Companies Act (Cap.50), the Authority may impose all or any of the following additional duties on an auditor of the 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 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 referred to in paragraph (b) or (c),

and the auditor shall carry out such additional duties.

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

(6) For the avoidance of doubt, sections 207 and 208 of the Companies Act shall, to the extent to which they may be applicable, apply to the discharge of an auditor's additional duties under subsection (4).

**Immunity,etc**

**54A.**—(1) No liability shall be incurred by —

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

- (i) section 46 (except sections (5) and (6));
- (ii) section 58; or
- (iii) the business rules of the clearing house, including its default rules.

(2) No liability shall be incurred by —

- (a) a person discharging, by virtue of a delegation under the default rules of a clearing house, an obligation of the 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 that person; or
  - (ii) any member of any committee established by that 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.

(3) Any failure by a clearing house to comply with its business rules in relation to a matter does 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.

(4) 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 clearing house, and

reasonably believes and has reasonable grounds for believing that he is entitled to take that action, he is not 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 2 - Clearing House and Insolvency*

**Interpretation of this Division**

**55.**—(1) In this Division, unless the context otherwise requires —

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

“default rules”, in relation to a clearing house, means the rules of the clearing house which provide for the taking of proceedings or other action if a participant 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;

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

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

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

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

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

“market contract” means a contract subject to the business rules of a clearing house entered into by the clearing house with a participant pursuant to a novation which is both in accordance with those business rules and for the purposes of the clearing and settlement of transactions in futures contracts or securities subject to the business rules of, a clearing house;

“participant” means a person who, under the business rules of a clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house;

“property” means —

- (a) money, letters of credit, banker’s drafts, certified cheques, or other similar instruments.
- (b) securities, including securities which are not securities within the meaning of section 2; or
- (c) futures contracts and any similar financial contracts;

“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, or judicial manager; or
- (c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property;

“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 to —

- (a) the Bankruptcy Act (Cap.20);
- (b) Parts VIIIA, IX and X of the Companies Act (Cap.50); and
- (c) any other written law which is concerned with or in any way related to the bankruptcy or insolvency of a person,

but excludes 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 contract, whether by performance, compromise or otherwise.

### **Proceedings of clearing house take precedence over law of insolvency**

**56.**—(1) The following shall not be to any extent invalid at law for inconsistency with the law for distributing the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver, receiver and manager or judicial manager over any of the assets of a person —

- (a) a market contract;
- (b) the business rules of a clearing house for the settlement of a market contract;
- (c) proceedings or other action taken under the business rules of a clearing house for the settlement of a market contract and the outcome of such proceedings or other action;
- (d) a market charge;
- (e) the default rules of a clearing house; or
- (f) default proceedings and the outcome of such proceedings.

(2) A relevant office-holder, or a court acting under the law of insolvency, 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 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 62 after the completion of a matter referred to in section 62(2)(a) or (b).

### **Supplementary provisions as to default proceedings**

**57.**—(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) 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**

**58.**—(1) A 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 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 clearing house may include in that report such other particulars in respect of such proceedings as it thinks fit.

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

(4) Where a relevant office-holder or defaulter receives pursuant to subsection (2) a report made pursuant to 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;
- (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**

**59.**—(1) This section applies to any net sum certified under section 58(1)(a) by a clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Notwithstanding any of the provisions of section 87 or 88 of the Bankruptcy Act (Cap.20), 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 58(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 (Cap.20) or section 327 of the Companies Act (Cap.50).

**Disclaimer of onerous property, rescission of contracts, etc.**

**60.**—(1) Section 110 of the Bankruptcy Act (Cap.20) and section 332 of the Companies Act (Cap.50), shall not apply to —

- (a) a market contract;
- (b) a contract effected by a 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 section 259 and 299 of the Companies Act (Cap.50), shall not apply to any act, matter or thing which has been done pursuant to —

- (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 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 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 made for the purpose of enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

### **Adjustment of prior transactions**

**61.**—(1) No order shall be made pursuant to —

- (a) section 98 or 99, of the Bankruptcy Act (Cap.20);
- (b) section 227T, 329 or 331 of the Companies Act (Cap.50);  
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 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 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 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 made in 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**

**62.**—(1) Where a participant (“the first participant”) sells securities at an over-value to, or purchases securities at an under-

value from, a second participant in circumstances described in subsection (2), 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 (specified in subsection (4)) 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 (specified in subsection (4)) is recoverable even if the sale or purchase may have been discharged according to the business rules of a clearing house and replaced by a market contract.

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

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

the specified event occurs within the period of 6 months immediately following the date on which the sale or purchase was so 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, pursuant to 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, pursuant to section 296 of the Companies Act (Cap.50); or
- (d) the presentation of a petition for the winding up of the second participant or that person, as the case may be, by a court;

“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 is 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.**

**63.—**(1) The provisions of this section shall have effect with respect to the application by a clearing house of property provided as market collateral (hereinafter referred to as “the property”).

(2) The property may be applied in accordance with the business rules of a clearing house so far as it is necessary for it to be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the clearing house had actual notice of the interest, right or breach of duty, as the case may be, at the time the property was provided as market collateral.

(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 clearing house in accordance with its business rules.

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

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

**64.**—(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 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**

**65.**—(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 the order or doing the act would be prohibited under this Act for a court in Singapore or a relevant office-holder.

(2) In 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**

**66.**—(1) Where a participant —

- (a) in his capacity as such enters into any transaction (including a market contract) with a clearing house; and
- (b) but for this subsection, 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 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.

### **Securities deposited with clearing house**

**67.¾(1)** Subject to subsections (2) and (3), an action, claim or demand, either civil or criminal, for a right, title or interest held by any person in securities deposited by a participant with a clearing house in accordance with the business rules of the clearing house, shall not lie, and shall not be commenced or allowed, against the clearing house or its nominees, notwithstanding any other written law or rule of law.

(2) The operation of subsection (1) in respect of securities deposited with a clearing house is subject to the modifications and exclusions provided in the business rules of the clearing house.

(3) This section does not operate to prejudice the operation of section 194 of the Companies Act (Cap.50)

### **Preservation of rights, etc.**

**68.** 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.

Jk/PART III (Zip/Jes) (21.3.01)

## PART IV

CAPITAL MARKETS SERVICES LICENCE AND  
REPRESENTATIVE'S LICENCE*Division 1 ¾ Licensing***Application of this Division**

**69.** This Division applies to persons who carry on business in any regulated activity or who hold themselves out as doing so, whether as principal, agent or representative.

**Capital markets services licence to carry on business in regulated activities**

**70.**—(1) No person, whether as principal or agent, shall carry on business in any regulated activity or hold himself out as carrying on such a business unless he is the holder of a capital markets services licence for that regulated activity.

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

- (a) any person exempted under Division 2 of this Part; and
- (b) any person specified in the Third Schedule.

(3) 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 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 \$15,000 for every day or part thereof during which the offence continues after conviction.

**Representative's licence**

**71.**—(1) No person shall act as a representative in carrying on business in any regulated activity or hold himself out as doing so, unless he is the holder of a representative's licence for that regulated activity.

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

- (a) any person who acts as a representative of an exempt person; and
- (b) any person which the Authority may by regulation exempt from holding a representative's licence in respect of any regulated activity.

(3) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$50,000.

(4) 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 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.

### **Application for and renewal of licence**

**72.**—(1) An application for a licence or for the renewal of a licence shall be made to the Authority in the prescribed form and manner and, in the case of an application for renewal of a licence, shall be made not later than one month or such other period as the Authority may by regulations prescribe, before the expiry of the licence.

(2) The Authority may require an applicant to supply the Authority with such further information as it considers necessary in relation to the application.

(3) An application for a licence or for the renewal of a licence shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

(4) An application for a representative's licence in respect of any regulated activity shall be supported by a principal who is the holder of or who had applied for a capital markets services licence for that regulated activity.

(5) An application for a representative's licence shall be deemed to be withdrawn if the principal withdraws his support of the application in writing.

(6) Where a person submits an application for renewal of his licence after the period referred to in subsection (1), the Authority may impose a late renewal fee not exceeding \$100 for every day or part thereof that the renewal is late, subject to a maximum of \$3,000.

(7) Where a person would but for this section be guilty of an offence for not being the holder of a particular licence, if before the expiration of that licence he has applied for renewal of that licence, he —

(a) shall not be guilty of the offence; and



- (b) shall comply with the requirements of this Act as though he were the holder of that licence,

for the period from the expiry of that licence until —

- (i) that licence is renewed; or
- (ii) his application for renewal is withdrawn or refused.

### **Licence fee**

**73.**—(1) A licensed person shall pay such licence fee as may be prescribed by the Authority.

(2) There shall be no refund of any licence fee paid to the Authority in the event that a licence is suspended or revoked by the Authority or the licensed person ceases to carry on business at any time prior to the expiry of his licence.

### **Grant of capital markets services licence**

**74.**—(1) A corporation may make an application to the Authority for a capital markets services licence to carry on business in one or more regulated activities.

(2) In granting a capital markets service licence, the Authority shall specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate.

(3) The Authority may —

- (a) incorporate in the description of a regulated activity, such limitation or prohibition as it considers appropriate, including the circumstances in which the regulated activity may or may not be carried on by the licensee; or
- (b) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

(4) A capital markets services licence shall only be granted if the applicant meets such minimum financial and other requirements as the Authority may by regulations prescribe either generally or specifically, or are provided in the business rules of a securities exchange or a futures exchange.

(5) Subject to the regulations made under this Act, where an application is made for the grant or renewal of a capital markets services licence, the Authority may refuse the application if —

- (a) the applicant 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, and to any circumstances likely to affect its manner of conducting business, as the Authority may require;
- (b) the applicant or its substantial shareholder is in the course of being wound up or liquidated;
- (c) a levy of execution in respect of the applicant or its substantial shareholder has not been satisfied;
- (d) a receiver, a receiver and manager, judicial manager or equivalent person has been appointed to the applicant or its substantial shareholder;
- (e) the applicant 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;
- (f) the applicant or its substantial shareholder, or any director, officer or employee of the applicant —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence the conviction for which involved a finding that it or he acted fraudulently or dishonestly;
  - (ii) has been convicted of an offence under this Act; or
  - (iii) has committed a breach of any regulations made under this Act relating to licensed persons;
- (g) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant who are to perform duties in connection with the holding of the licence;
- (h) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its directors, officers, employees and substantial shareholders are fit and proper persons;
- (i) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers or customers having regard to the reputation, character, financial integrity and reliability of the applicant or any of its substantial shareholders, directors, officers or employees;

- (j) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholder or the manner in which the applicant's business is to be conducted;
- (k) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
- (l) there are other circumstances which are likely to —
  - (i) lead to the improper conduct of business by the applicant, any of its directors, officers or employees, or its substantial shareholder; or
  - (ii) reflect discredit on the manner of conducting the business of the applicant or its substantial shareholder;
- (m) the Authority has reason to believe that the applicant, or any of its directors, officers or employees, will not perform the functions for which the applicant seeks to be licensed, efficiently, honestly or fairly; or
- (n) the Authority is of the opinion that it is in the interests of the public to do so.

(6) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$100,000.

### **Grant of representative's licence**

**75.**—(1) A natural person may apply to the Authority for a representative's licence to act as a representative to carry on business in one or more regulated activities.

- (2) In granting a representative's licence, the Authority must —
  - (a) specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate; and
  - (b) relate the licence to the principal who supported that application for a representative's licence.
- (3) The Authority may —
  - (a) incorporate in the description of a regulated activity, such limitation or prohibition as it considers appropriate, including the circumstances in which the activity may or may not be carried on by the licensee;

- (b) specify a narrower or wider description of regulated activity than that to which the application relates; or
- (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

(4) Subject to the regulations made under this Act, where an application is duly made for the grant or renewal of a representative's licence, the Authority may refuse the application if —

- (a) the applicant has not provided the Authority with such information relating to him, as the Authority may require;
- (b) the applicant is an undischarged bankrupt whether in Singapore or elsewhere;
- (c) a levy of execution in respect of the applicant has not been satisfied;
- (d) the applicant has made a composition or an arrangement with his creditors;
- (e) the applicant —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence the conviction for which involved a finding that he acted fraudulently or dishonestly;
  - (ii) has been convicted of an offence under this Act; or
  - (iii) has committed a breach of any regulations made under this Act relating to licensed persons;
- (f) the Authority is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties of a licensed person;
- (g) the applicant fails to satisfy the Authority that he is a fit and proper person to be licensed;
- (h) the Authority has reason to believe that the applicant may not be able to act in the best interests of the subscribers or customers of his principal having regard to his reputation, character, financial integrity and reliability;
- (i) the Authority is not satisfied as to the financial standing of the applicant;
- (j) the Authority is not satisfied as to the record of past performance or expertise of the applicant;

- (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business;
- (l) as far as the Authority can ascertain, the applicant is in arrears in the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap.36);
- (m) the Authority has reason to believe that the applicant will not perform the functions for which he seeks to be licensed efficiently, honestly or fairly; or
- (n) the Authority is of the opinion that it is in the interests of the public to do so.

### **Power of Authority to impose conditions and restrictions**

**76.**—(1) The Authority may grant or renew a licence subject to such conditions or restrictions as it thinks fit.

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

(3) Any person who contravenes any condition of or restriction in his licence shall be guilty of an offence.

### **Period of licence**

**77.**—(1) Subject to subsection (2), a licence shall be in force for a period of 3 years or such other period as the Authority may specify in writing to the applicant, with effect from the date of its issue.

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of 3 years or such other period as the Authority may specify in writing to the applicant, next succeeding the date upon which but for its renewal it would have expired.

### **Variation of licence**

**78.**—(1) The Authority may, on the application of a licensed person, vary its licence by —

- (a) adding a regulated activity to those already specified in the licence; or

(b) removing a regulated activity from those already specified in the licence.

(2) An application referred to in subsection (1) 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 —

(a) approve the application subject to such conditions as the Authority considers fit; or

(b) refuse the application on any of the grounds set out in section 74(5) or 75(4).

### **False statements**

**79.** Any person who, in connection with an application for a licence or the renewal or variation of a licence, wilfully makes a statement which is false or misleading in a material particular, knowing it to be false or misleading, or wilfully omits to state any matter or thing without which the application is misleading in a material respect, 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.

### **Notification of change of particulars**

**80.** Where —

(a) the holder of a capital markets services licence ceases to carry on business in any of the regulated activities to which the licence relates;

(b) the holder of a representative's licence ceases to be a representative of the principal in relation to whom the representative's licence was issued; or

(c) a change occurs in any matter particulars of which are required by section 81 to be entered in the register of licensed persons in relation to the licensed person,

the licensed person shall, not later than 14 days after the occurrence of the event concerned, give to the Authority, in the prescribed form, particulars in writing of the event concerned.

### **Register of licensed persons**

**81.**—(1) The Authority shall keep in such form as it thinks fit a register of current licensed persons specifying —

- (a) in relation to the holder of a capital markets services licence —
  - (i) its name;
  - (ii) the address of the principal place of business at which it carries on the business in respect of which the licence is held;
  - (iii) the regulated activity or activities to which its licence relates;
  - (iv) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
  - (v) such other information as the Authority may require;
- (b) in relation to the holder of a representative's licence —
  - (i) his name;
  - (ii) the name of his principal in relation to whom the licence was issued;
  - (iii) the regulated activity or activities to which his licence relates;
  - (iv) where the business of his principal is carried on under a name or style, other than the name of the principal, the name or style under which that business is carried on; and
  - (v) such other information as the Authority may require.

(2) Any person may, upon payment of the prescribed fee, inspect and take extracts from the register kept under subsection (1) and any such extract, purporting to be signed by the Authority, shall be admissible as evidence in any legal proceedings.

### **Revocation, suspension and lapsing of licence**

**82.**—(1) A licence shall be deemed to be revoked —

- (a) in the case of a holder of a capital markets services licence, if the holder is wound up or dissolved;
- (b) in the case of a representative, if the representative dies.

(2) The Authority may revoke a licence —

- (a) in the case of a holder of a capital markets services licence —

- (i) on any ground on which the Authority may refuse to grant a licence under section 74;
- (ii) if it fails or ceases to carry on the business in all the regulated activities for which it was licensed;
- (iii) if the Authority has reason to believe that the holder of the capital markets services licence, or any of its directors, officers or employees, has not performed its duties efficiently, honestly or fairly; or
- (iv) if the holder of the capital markets services licence contravenes any condition or restriction applicable in respect of the licence, or of any other provision in this Act;

(b) in the case of a representative —

- (i) on any ground on which the Authority may refuse to grant a licence under section 75;
- (ii) if he fails or ceases to carry on the business for which he was licensed;
- (iii) if the licence of his principal is revoked;
- (iv) if the Authority has reason to believe that he has not performed his duties efficiently, honestly or fairly; or
- (v) if he contravenes any condition or restriction applicable in respect of the licence, or any other provision in this Act.

(3) In a case to which subsection (2) applies, the Authority, if it considers it desirable to do so, may instead of revoking a licence, suspend the licence for a specific period and may at any time remove the suspension.

(4) Without prejudice to subsections (2) and (3), the Authority may, on any ground described in subsection (2), issue an order prohibiting the licensed person from performing one or more of the regulated activities to which its licence relates for such period as may be determined by the Authority (referred to in this section as a prohibition order).

(5) Any licensed person who performs a regulated activity in breach of a prohibition order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.



- (6) A licence shall be deemed to have lapsed —
- (a) in the case of a holder of a capital markets services licence, where —
    - (i) it has not commenced the business to which its licence relates within 6 months of being granted a licence; or
    - (ii) it has ceased to carry on the business to which the licence relates, for a continuous period of 3 months;
  - (b) in the case of a representative, where —
    - (i) he has not commenced his duties as a representative of the principal to which his licence relates, within 6 months of being granted a licence; or
    - (ii) he has ceased to be a representative of the principal to which his licence relates for a continuous period of 3 months.
- (7) A revocation, suspension, lapsing or expiry of a licence of a person or the issue of a prohibition order shall not operate so as to —
- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or lapsing of the licence or the issue of the prohibition order, as the case may be; or
  - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

**Deposit to be lodged in respect of capital markets services licence**

**83.** The Authority may, in granting, renewing or varying a capital markets services licence, require the applicant to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit in such amount as the Authority may by regulations prescribe in respect of that licence.

**Approval of chief executive officer and executive director of holder of capital markets services licence**

**84.—(1)** No holder of a capital markets services licence shall appoint a person as its chief executive officer or executive director

in Singapore unless such holder has obtained the approval of the Authority.

(2) For the purposes of subsection (1) and without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant approval, have regard to such criteria as the Authority may prescribe in regulations or specify in directions issued by notice in writing.

(3) An applicant that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days of the decision, appeal to the Minister whose decision shall be final.

(4) In this section —

“chief executive officer” means any person by whatever name called employed by a holder of a capital markets services licence to be directly responsible for the conduct of any type of business of the holder in Singapore;

“executive director” means a person who is an employee of, or holds any other office of profit in, the holder of a capital markets services licence in conjunction with his office of director thereof.

### **Removal of chief executive officer or director of holders of capital markets services licence**

**85.**—(1) If it appears to the Authority that —

- (a) a chief executive officer of a holder of a capital markets services licence; or
- (b) a director of a holder of a capital markets services licence,

has failed to perform his functions, the Authority may, in writing, direct the holder of a capital markets services licence to remove the chief executive officer or director, as the case may be.

(2) For the purposes of subsection (1) and without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether the chief executive officer or director has failed to perform his functions, have regard to certain criteria as may be prescribed or specified in written directions.

(3) An applicant that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days of the decision, appeal to the Minister whose decision shall be final.

(4) Any holder of a capital markets services licence who fails to comply with a direction issued by the Authority under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

(5) For the purposes of this section —

“chief executive officer” has the same meaning as in section 84(4);

“director” includes an executive director as defined in section 84(4).

### **Appeals**

**86.** Any person who is aggrieved —

- (a) by the refusal of the Authority to grant, renew or vary a licence;
- (b) by the revocation or suspension of a licence by the Authority; or
- (c) by the issue of a prohibition order by the Authority,

may, within 30 days of the Authority’s decision, appeal in writing to the Minister in accordance with Part XIV .

### *Division 2 $\frac{3}{4}$ Exemptions*

#### **Exemptions from requirement to hold capital markets services licence**

**87.—**(1) The following persons shall be exempted from the requirement to hold a capital markets services licence to carry on business in any regulated activity or hold themselves out as carrying on such business:

- (a) any bank licensed under the Banking Act (Cap.19);
- (b) any merchant bank approved as a financial institution and approved to carry out such regulated activity under the Monetary Authority of Singapore Act (Cap.186);
- (c) any finance company licensed under the Finance Companies Act (Cap.108) which has been granted an exemption from section 25(2) of that Act to carry on business in such regulated activity;
- (d) any company or society registered under the Insurance Act (Cap.142);

- (e) any person licensed under the Financial Advisers Act 2001 whose carrying on of the business in that regulated activity is solely incidental to his carrying on of the business for which he is licensed under that Act; and
- (f) such other person or class of persons which the Authority may by regulations prescribe with respect to any regulated activity.

(2) Subject to subsection (3), sections 109, 110, 111, 113, 114, 115, 117 and 118 shall, with such modifications as may be necessary, apply to an exempt person (other than a person referred to in subsection (1)(f)) as if it were a holder of a capital markets services licence.

(3) The Authority may, on the application of an exempt person (other than a person referred to in subsection (1)(f)) exempt such person from the requirement to comply with any of the provisions referred to in subsection (2).

(4) The Authority may, by notice in writing, impose such conditions or restrictions on an exempt person as it thinks fit and the exempt person shall comply with such conditions or restrictions.

(5) Any exempt person who contravenes any condition or restriction imposed on it under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(6) The Authority may withdraw an exemption granted to any exempt person under this section —

- (a) if it contravenes any condition or restriction imposed on it under subsection (4);
- (b) if it contravenes any direction issued to it under section 88(1); or
- (c) at any time for any reason as the Authority thinks fit.

(7) A withdrawal of an exemption shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such exempt person, whether the agreement, transaction or arrangement was entered into before or after, the withdrawal of the exemption; or

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

(8) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$100,000.

*Division 3  $\frac{3}{4}$  Directions to licensed person and exempt person*

**Authority may issue directions**

**88.**—(1) The Authority may, where it appears to the Authority to be necessary or expedient in the interest of the public to do so, issue directions by notice in writing either of a general or specific nature to a licensed person or exempt person or class of licensed persons or exempt persons.

(2) Any person to whom a notice is given under subsection (1) shall comply with such direction or directions as may be contained in the notice.

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

(4) Without prejudice to the generality of subsection (1), any direction issued by the Authority under that subsection may relate to —

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

(b) the type and frequency of submission of financial returns and other information to be submitted to the Authority.

(5) A licensed person or exempt person who contravenes any of the directions issued to him under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

## PART V

## ACCOUNTS, CUSTOMER ASSETS AND AUDIT

*DIVISION 1 - PRELIMINARY***Interpretation of this Part**

**89.** In this Part —

“custodian” means —

- (a) a bank licensed under the Banking Act (Cap.19);
- (b) a merchant bank that is approved as a financial institution under the Monetary Authority of Singapore Act (Cap.186);
- (c) a company registered under the Trust Companies Act (Cap.336);
- (d) a depository agent as defined in Division 7A of Part IV of the Companies Act (Cap.50); or
- (e) such other financial institution or corporation as the Authority may prescribe;

“foreign custodian” means such financial institution or corporation, having a place of business outside Singapore, as may be prescribed by the Authority;

“property” includes securities;

“trust account” means a current or deposit account, or property account, which —

- (a) is kept with a custodian or foreign custodian, as the case may be; and
- (b) is designated or evidenced as a trust or customer’s account.

**Application of this Part**

**90.** This Part applies to and in relation to a holder of a capital markets services licence, and to a representative of such a holder, whether that holder carries on business in Singapore or elsewhere.

*DIVISION 2 - ACCOUNTS AND RECORDS*

**Keeping of accounts and records**

**91.**—(1) A holder of a capital markets services licence shall —

- (a) keep such books, accounts and records as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time; and
- (b) keep those books, accounts and records to be kept in such a manner as will enable them to be conveniently and properly audited.

(2) The Authority may, without prejudice to sections 2(3) and 295, make regulations in respect of all or any of the matters in this Division, including the keeping of such books, accounts and records by a holder of a capital markets services licence in such form and manner as may be prescribed.

(3) A holder of a capital markets services licence shall retain such books, accounts and records as may be required to be kept under this Act for a period of not less than 6 years.

(4) A holder of a capital markets services licence shall —

- (a) furnish such returns and records in such form and manner as may be prescribed; and
- (b) provide such information relating to its business as the Authority may require.

**Penalties for this Part**

**92.** A holder of a capital markets services licence which, without reasonable excuse, contravenes any of the provisions of this Division, or the regulations made thereunder, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

*DIVISION 3 - CUSTOMER ASSETS*

**Handling of customer assets**

**93.**—(1) A holder of a capital markets services licence shall, to the extent that it receives customer's money or property —

- (a) do so on the basis that it shall be applied solely for such purpose as may be agreed to, when or before it receives the money or property, by the customer;
- (b) pending such application, pay or deposit the money or property by the next bank business day to or with a custodian with whom a trust account is maintained in accordance with this Act; and
- (c) record and maintain a separate book entry for each customer in accordance with this Act in relation to that customer's money or property.

(2) The Authority may, without prejudice to sections 2(3) and 295, make regulations in respect of all or any of the matters in this Division, including the handling of customer's money or property by a holder of a capital markets services licence.

(3) In this section, "customer's money or property" means money received or retained by, or property deposited with, a holder of a capital markets services licence in the course of its business for which it is liable to account to another person, and any money or property accruing therefrom.

### **Penalties**

**94.** The holder of a capital markets services licence which, without reasonable excuse, contravenes any of the provisions of this Division, or any regulation made thereunder, shall be guilty of an offence and shall be liable on conviction —

- (a) where it is found to have committed the offence with intention to defraud, 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; or
- (b) in any other case, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

### *DIVISION 4 - AUDIT*

#### **Appointment of auditors**

**95.** A holder of a capital markets services licence shall appoint an auditor to audit its accounts and where, for any reason, the



auditor ceases to act for the holder, the holder shall, as soon as practicable thereafter, appoint another auditor.

**Lodgment of annual accounts, etc.**

**96.**—(1) A holder of a capital markets services licence shall, in respect of each financial year —

- (a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and
- (b) lodge the account and balance-sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with an auditor's report on the accounts and balance-sheet.

(2) Where an application for the extension of the period of 5 months specified in subsection (1) is made by a holder of a capital markets services licence to the Authority and the Authority is satisfied that there are special reasons for requiring the extension, the Authority may extend that period by not more than 4 months, subject to such conditions as the Authority may think fit to impose.

(3) Any holder of a capital markets services licence which contravenes subsection (1)(b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 for every day or part thereof that the lodgment is late, subject to a maximum of \$50,000.

(4) Any holder of a capital markets services licence which fails to comply with any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(5) Notwithstanding any other provision of this Act or the Companies Act (Cap.50), the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a holder of a capital markets services licence —

- (a) at any time remove the auditor; and
- (b) require the holder, as soon as practicable thereafter, to appoint another auditor.

**Reports by auditor to Authority in certain cases**

**97.** Where, in the performance of his duties as an auditor for a holder of a capital markets services licence, an auditor becomes aware —

- (a) of any matter which, in his opinion, affects or may affect (whether adversely or otherwise) the financial position of the holder to a material extent;
- (b) of any matter which, in his opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) of any irregularity that has or may have a material effect upon the accounts, including irregularities that may affect or jeopardise the money or property of any customer of the holder,

he shall immediately thereafter send —

- (i) a report in writing of the matter or irregularity to the Authority; and
- (ii) where the holder is a member of an exchange, a copy of the report to the exchange.

### **Power of Authority to appoint auditor**

**98.**—(1) Where —

- (a) a holder of a capital markets services licence fails to lodge an auditor's report under section 96; or
- (b) the Authority receives a report under section 97,

the Authority may, without prejudice to its powers under section 104, if it is satisfied that it is in the interests of the holder, the holder's customers of the holder or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books, accounts and records of the holder.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the holder of a capital markets services licence, the Authority may, in writing, direct the holder to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a holder of a capital markets services licence fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under this section shall, on the conclusion of the examination and audit, make a report to the Authority.

**Power of auditors appointed by Authority**

**99.**—(1) An auditor appointed under section 98 to examine and audit the books, accounts and records of a holder of a capital markets services licence may, for the purpose of carrying out the examination and audit —

- (a) examine, on oath or affirmation, any director, employee or agent of the holder or any other auditor appointed under this Act in relation to those books, accounts and records;
- (b) require any of the directors, employees and agents of the holder, or any other auditor appointed under this Act, to produce any of the books, accounts or records held by or on behalf of the holder relating to its business, and make copies of or take extracts from, or retain possession of, such books, accounts or records for such period as is necessary to enable them to be inspected;
- (c) require a securities exchange, futures exchange or clearing house to produce any of the books, accounts or records kept by it, or any information in its possession, relating to the business of the holder;
- (d) employ such persons as he considers necessary to assist him in carrying out the examination and audit; and
- (e) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could do himself as an auditor under this subsection, other than the examination of any person on oath.

(2) Subject to subsection (3), any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 98 or a person authorised under subsection (1)(e), 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.

(3) A securities exchange, futures exchange or clearing house which, without reasonable excuse, fails to comply with any request made to it by an auditor appointed under section 98 or a person authorised under subsection (1)(e) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

### **Offence to destroy, alter, etc., records**

**100.**—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under this Division —

- (a) destroys, conceals or alters any book, account or record relating to the business of a holder of a capital markets services licence; or
- (b) sends, or conspires with any other person to send out of Singapore any book, account or record, or any property of any description belonging to, in the possession of, or under the control of a holder of, a capital markets services licence,

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

(2) If, in a prosecution for an offence under subsection (1), it is proved that the person charged —

- (a) destroyed, concealed or altered any book, account or record mentioned in subsection (1)(a); or
- (b) sent, or conspired to send, out of Singapore any such book, account or record, or any property mentioned in subsection (1)(b),

the onus of proving that in so doing he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Division shall lie on him.

### **Safeguarding of records**

**101.**—(1) The holder of a capital markets services licence shall take reasonable precautions to prevent falsification of the books, accounts and records required to be kept by him under this Act and to facilitate the discovery of any falsification of such books, accounts and records.

(2) Any holder of a capital markets services licence who contravenes subsection (1) shall be guilty of an offence under this Act.

### **Restriction on auditor's and employee's right to communicate certain matters**

**102.** Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the

purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 98 or carrying out any duty imposed under section 104, and any employee of such an auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such to any person other than —

- (a) the Authority or any person approved or designated by the Authority; and
- (b) in the case of an employee of such an auditor, the auditor.

**Exchanges, etc., may impose additional obligations on members**

**103.** Nothing in this Division shall prevent a securities exchange, futures exchange or clearing house from imposing on its members any additional obligation or requirement which it thinks is necessary with respect to —

- (a) the audit of accounts;
- (b) the information to be given in reports by auditors; or
- (c) the keeping of accounts, books and records.

**Additional powers of Authority in respect of auditors**

**104.—**(1) Notwithstanding the provisions of the Companies Act (Cap.50) and this Division, the Authority may impose any or all of the following duties on an auditor of a holder of a capital markets services licence:

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

and the auditor shall carry out such additional duty or duties.

(2) A holder of a capital markets services licence shall remunerate his auditor in respect of the discharge of such additional duty or duties as the Authority may impose under subsection (1).

**Defamation**

**105.**—(1) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties under this Part; or
- (b) the sending of any report to the Authority under section 97. 98 or 104.

(2) This section does not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

## PART VI

## CONDUCT OF BUSINESS

*Division 1 - General***Certain representations prohibited**

**106.**—(1) The holder of a capital markets services licence shall not represent or imply or knowingly permit to be represented or implied in any manner to any person that his abilities or qualifications have in any respect been approved by the Authority.

(2) A statement that a person is holding a capital markets services licence to carry on business in any regulated activity is not a contravention of this section.

**Issue of contract or confirmation notes**

**107.** The holder of a capital markets services licence to deal in securities, trade in futures contracts or carry out leveraged foreign exchange trading shall, in respect of a sale or purchase of securities or futures contracts or a transaction connected with leveraged foreign exchange trading, immediately upon completion of the transaction give a contract note or confirmation note to the other party to the transaction in the form and manner prescribed.

**Dealings by directors, officers or employees of licensed persons**

**108.**—(1) The holder of a capital markets services licence shall not give any unsecured advance, unsecured loan or unsecured credit facility to any of his directors, officers or employees or to a person who, to his knowledge, is a connected person of any of his directors officers or employees, if —

- (a) the unsecured advance, unsecured loan or unsecured credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase, subscribe for or trade in any capital markets products; or
- (b) the holder knows or has reason to believe that the unsecured advance, unsecured loan or unsecured credit facility will be used for the purpose of purchasing, subscribing for or trading in any capital markets products.

### **Certain persons to disclose certain interests**

**109.**—(1) Where the holder of a capital markets services licence, or a representative of such a holder, sends a circular or other similar written communication in which the holder or representative made a recommendation, whether expressly or by implication, with respect to any capital markets products, the holder or representative shall include in the circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of, those capital markets products that he or a person associated with him has at the date on which he sends the circular or other communication.

(2) It is a defence to a prosecution for failing to comply with subsection (1) if the defendant establishes that, at the time at which the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware —

- (a) that he had an interest in, or an interest in the acquisition or disposal of, those capital markets products; or
- (b) that the person associated with him had an interest in, or an interest in the acquisition or disposal of, those capital markets products,

as the case may be.

(3) For the purposes of subsections (1) and (2) —

- (a) an interest of a person in the disposal of capital markets products includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon, or arising out of, the disposal of the capital markets products;
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of capital markets products shall be deemed to have an interest in the acquisition or disposal of those capital markets products; and
- (c) notwithstanding section 3 —
  - (i) a person is not associated with another person unless the person and the other person are acting jointly, or otherwise acting under or in accordance with an arrangement made between them, in relation to the



sending of the circular or written communication or the making of the recommendation; and

- (ii) a person is not associated with another person by reason only that he is a director of a corporation of which the other person is also a director, whether or not the corporation carries on business in any regulated activity.

(4) Where —

- (a) a person has subscribed for or purchased capital markets products for the purpose of offering all or any of them to the public for purchase; and
- (b) the person offers any of those capital markets products for purchase,

the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the capital markets products unless he has informed each person to whom the recommendation is made that he acquired the capital markets products for that purpose.

(5) Where —

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

the person shall not, during the period of 90 days after the close of the offer —

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

unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to capital markets products 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 capital markets products have not been subscribed for or purchased.

(6) The holder of a capital markets services licence, or a representative of such a holder, shall not send to a person a circular or other written communication, written offer or written recommendation to which subsection (1), (4) or (5) applies unless the circular or other communication or the offer or recommendation —

(a) in the case of the holder of a capital markets services licence — is signed by a director, officer or secretary of the holder;

(b) in the case of the representative — is signed by the representative.

(7) When the holder of a capital markets services licence, or a representative of such a holder, sends to a person a circular or other written communication, a written offer or written recommendation to which subsection (1), (4) or (5) applies, the holder or representative shall preserve a copy of the circular or other communication or of the offer or recommendation, duly signed in accordance with subsection (6), for 7 years.

(8) Reference in this section to an offer of capital markets products shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire capital markets products.

(9) For the purposes of this section, a circular or other written communication, written offer or written recommendation sent to a person shall, if it is signed by a director, executive officer or secretary of a corporation, be deemed to have been sent by the corporation.

(10) The Authority may, if it is in the public interest, exempt a person or class or persons, or a capital markets product or class of capital markets products from the application of this section.

(11) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.

### **Recommendations by certain persons**

**110.**—(1) The holder of a capital markets services licence, or a representative of such a holder, shall not make a recommendation

with respect to any capital markets products to a person who may reasonably be expected to rely on the recommendation if the holder or representative does not have a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), the holder of a capital markets services licence, or a representative of such a holder, does not have a reasonable basis for making a recommendation to a person unless —

- (a) the holder or representative has, for the purposes of ascertaining that the recommendation is appropriate having regard to the information possessed by him concerning the investment objectives, financial situation and particular needs of the person, given such consideration to, and conducted such investigation of, the subject-matter of the recommendation as is reasonable in all the circumstances; and
- (b) the recommendation is based on that consideration and investigation.

(3) The holder of a capital markets services licence, or a representative of such a holder, who contravenes subsection (1) is not guilty of an offence under subsection (1) or under section .

(4) Where —

- (a) the holder of a capital markets services licence, or a representative of such a holder, contravenes subsection (1) by making a recommendation to a person;
- (b) the person, in reliance on the recommendation, does a particular act, or refrains from doing a particular act;
- (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, in reliance on the recommendation; and
- (d) the person suffers loss or damage as a result of doing that act, or refraining from doing that act, as the case may be,

the holder or representative is liable to pay damages to the person in respect of that loss or damage.

(5) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

### **Priority to customers' orders**

**111.**—(1) Except as permitted by subsection (2) —

- (a) the holder of a capital markets services licence to deal in securities or trade in futures contracts when acting as principal or on behalf of a person associated with him; or
- (b) a representative of such a holder when acting for his own account or on behalf of a person associated with him,

shall not enter into a transaction for the purchase or sale of securities or futures contracts that are permitted to be traded on the stock market of a securities exchange, futures market of a futures exchange or a recognised trading system provider, as the case may be, if a customer of that holder or representative, who is not associated with him, has instructed him to purchase or sell, respectively, securities or futures contracts of the same class and he has not complied with the instruction.

(2) Subsection (1) does not apply to the entering into of a transaction by the holder of a capital markets services licence to deal in securities or trade in futures contracts as principal or on behalf of a person associated with him, or by a representative of such a holder for his own account or on behalf of a person associated with him, if —

- (a) 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
- (b) the transaction is entered into in prescribed circumstances.

(3) Any person who contravenes this section 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 three years or to both.

### **Outsourcing**

**111A.**—(1) A holder of a capital markets services licence shall not outsource any operational function in respect of its regulated activities to any person (other than a representative) unless it has —

- (a) obtained an undertaking from such person to enable the Authority to inspect its books in respect of such regulated activity as provided for in section 134(1)(b); and
- (b) complied with such other requirements as the Authority may prescribe or impose.

(2) 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 and in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof which the offence continues after conviction.

### **Power of Authority to make regulations**

**112.**—(1) The Authority may make regulations in respect of the conduct of business in any regulated activity by the holder of a capital markets services licence or a representative of such a holder.

(2) Without affecting the generality of subsection (1), regulations made under this section may —

- (a) specify requirements applicable to the holder of a capital markets services licence in relation to providing securities financing;
- (b) prohibit the use of misleading or deceptive advertisements by or on behalf of the holder of a capital markets services licence, and impose conditions for the use of advertisements by or on behalf of the holder;
- (c) specify terms and conditions to be included in customer contracts and provide that the terms and conditions are, unless the Authority in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the customer contracts in which they are included, whether or not a different intention appears from the provisions of the customer contracts;
- (d) specify information that the holder of a capital markets services licence is to provide to his customer on entering into a customer contract with the customer, and thereafter from time to time on request by the customer, concerning the business of the holder and the identity and status of any person acting on behalf of the holder with whom the customer may have contact;

- (e) require the holder of a capital markets services licence, and a representative of such a holder, to ascertain, in relation to each customer of the holder, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the holder, and specify the steps to be taken for this purpose ;
- (f) require the holder of a capital markets services licence, and a representative of such a holder, when providing information or advice concerning capital markets products to a customer of the holder, to ensure the suitability of the information or advice to be provided to the customer, and specify the steps to be taken for this purpose;
- (g) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder the financial risks in relation to capital markets products that the holder or the representative, as the case may be, recommends to the customer and specify the steps to be taken for this purpose;
- (h) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder any commission or advantage the holder or the representative, as the case may be, receives or is to receive from a third party in connection with any capital markets products which the holder or the representative, as the case may be, recommends to the customer, and specify the steps to be taken for this purpose;
- (i) prohibit the holder of a capital markets services licence and a representative of such a holder from effecting a transaction on behalf of a customer of the holder except in specified circumstances;
- (j) specify the circumstances in which, and the conditions under which, the holder of a capital markets services licence, and a representative of such a holder, may use information relating to the affairs of the customer of the holder;
- (k) require the holder of a capital markets services licence, and a representative of such a holder, to take steps to avoid cases of conflict between any of their interests and those of a customer of the holder, and specify the steps to

be taken in the event of a potential or actual case of conflict;

- (l) specify the circumstances in which the holder of a capital markets services licence may receive any property or service from another holder of a capital markets services licence in consideration of directing business to that other holder;
- (m) specify the circumstances in which, and the conditions under which, a representative of the holder of a capital markets services licence is permitted to deal or trade for his own account in securities or futures contracts;
- (n) provide for any other matter relating to the practices and standards of conduct of the holder of a capital markets services licence and a representative of such a holder in carrying on business in any regulated activities;
- (o) provide that, subject to such conditions as may be prescribed, all or specified provisions of this Part shall not apply to a specified class of holders of capital markets services licences or their representatives, or to a specified class of capital markets products.

(3) Regulations made under this section may provide that any customer contract entered into by the holder of a capital markets services licence with its customer otherwise than in compliance with any specified regulation is, notwithstanding anything in the contract, unenforceable at the option of the customer.

(4) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$100,000.

(5) In this section, “customer contract” means any contract or arrangement between the holder of a capital markets services licence and its customer which contains terms on which the holder is to provide services to the customer.

### **Penalties**

**113.** Any person who without reasonable excuse contravenes or fails to comply with any of the provisions of this Division (except section 110), shall be guilty of an offence and shall be liable on conviction, where no penalty is expressly provided, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

*Division 2 - Securities***Dealings as principal**

**114.**—(1) Subject to subsection (4), the holder of a capital markets services licence to deal in securities shall not, as principal, deal in any securities with a person who is not the holder of a capital markets services licence to deal in securities unless he first informs the person that he is acting in the transaction as principal and not as agent.

(2) The holder of a capital markets services licence to deal in securities who, as principal, enters into a transaction of sale or purchase of securities with a person who is not the holder of a capital markets services licence to deal in securities shall state in the contract note that he is acting in the transaction as principal and not as agent.

(3) A reference in this section to the holder of a capital markets services licence to deal in securities dealing or entering into a transaction as principal includes a reference to a person —

- (a) dealing or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a corporation in which he has a controlling interest; or
- (c) dealing on behalf of a corporation in which his interest and the interests of his directors together constitute a controlling interest.

(4) Subsection (1) shall not apply to a transaction of sale or purchase of an odd lot of securities that is entered into by the holder of a capital markets services licence to deal in securities who is a member of a securities exchange and specialises in transactions relating to odd lots of securities.

(5) Where the holder of a capital markets services licence to deal in securities fails to comply with subsection (1) or (2) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the holder not later than 30 days after the receipt of the contract note and, where the holder fails to comply with subsection (1) or (2) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.

(6) Nothing in subsection (5) affects any right that a person has apart from that subsection.



(7) A person who contravenes or fails to comply with any of the provisions of this section 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.

### *Division 3 - Futures*

#### **Trading against customer**

**115.** The holder of a capital markets services licence to trade in futures contracts shall not knowingly enter into a transaction to buy from or sell to its customer any futures contract for his own account, an account of a connected person or for an account in which he has an interest (including any account over which he has a discretion), except with the customer's prior consent and in accordance with the business rules and practices of a futures exchange or a recognised trading system provider.

#### **Cross-trading**

**116.** The holder of a capital markets services licence to trade in futures contracts shall not knowingly fill or execute a customer's order for the purchase or sale of a futures contract on a futures market by offsetting against the order or orders of any other person, without effecting such a purchase or sale on the trading floor or electronic futures trading system and in accordance with the business rules and practices of a futures exchange or a recognised trading system provider.

#### **Risk disclosure by certain persons**

**117.—(1)** The holder of a capital markets services licence to trade in futures contracts or carry out leveraged foreign exchange trading shall not open a futures trading account or leveraged foreign exchange trading account for a customer unless he —

- (a) furnishes the customer with a separate written risk disclosure document which shall be in such form and contain such information as may be prescribed by the Authority; and
- (b) receives from the customer an acknowledgment signed and dated by the customer that he has received and understood the nature and contents of the risk disclosure document.

(2) The holder of a capital markets services licence to provide fund management shall not solicit or enter into an agreement with a prospective customer for the purpose of—

- (a) managing his futures trading account or foreign exchange trading account; or
- (b) guiding the customer's futures trading account or foreign exchange trading,

by means of a systematic programme that recommends specific transactions unless, at or before the time he engages in the solicitation or enters into the agreement (whichever is the earlier), the holder —

- (i) delivers or causes to be delivered to the prospective customer a risk disclosure document in respect of those purposes which shall be in such form and contain such information as the Authority may prescribe ; and
- (ii) receives from the prospective customer an acknowledgment signed and dated by him that he has received and understood the nature and contents of the risk disclosure document.

(3) Subsection (2) does not apply to collective investment schemes that are approved under Division 3 of Part XIII of this Act.

### **Penalties**

**118.** Any person who contravenes or fails to comply with any of the provisions of this Division 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 3 years or to both.

## PART VII

## DISCLOSURE OF INTERESTS

*Division 1 – Registers of Interests in Securities***Application of this Division**

**119.**—(1) This Division applies to a person who is —

- (a) a holder of a capital markets services licence to deal in securities, and a representative of such a holder;
- (b) a holder of a capital markets services licence to advise on corporate finance and a representative of such a holder; or
- (c) a holder of a capital markets services licence to provide fund management and a representative of such a holder.

(2) In this Division, a reference to securities is a reference to securities which are quoted on a securities exchange or a recognised trading system provider operated in Singapore.

**Register of securities**

**120.**—(1) A person to whom this Division applies shall —

- (a) maintain in the prescribed form a register of his interests in securities;
- (b) enter in the register, within 7 days after the date that he acquires any interest in securities, particulars of the securities in which he has an interest and particulars of his interest in those securities; and
- (c) retain that entry in an easily accessible form for a period of not less than 6 years after the date on which such entry was first made.

(2) Where there is a change (not being a prescribed change) in any interest in securities of a person to whom this Division applies, he shall —

- (a) enter in the register particulars of the change including the date of the change and the circumstances by reason of which the change has occurred; and
- (b) retain that entry in an easily accessible form for a period of not less than 6 years after the date on which such entry was first made.

### **Notice of particulars to Authority**

**121.**—(1) A person to whom this Division applies shall give notice to the Authority in the prescribed form containing such particulars as may be prescribed, including the place at which he will keep the register of his interests in securities or, if the register is in electronic form, the place at which full access to the register may be gained.

(2) The notice shall be given —

- (a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or
- (b) in the case of any other person, within 14 days after he becomes a person to whom this Division applies.

(3) The notice referred to in subsection (2) shall be given notwithstanding that the person has ceased to be a person to whom this Division applies before the expiry of the period referred to in subsection (2)(b).

(4) A person who ceases to be a person to whom this Division applies shall, within 14 days of his so ceasing, notify the Authority.

(5) A person who fails or neglects to give a notice required under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

### **Place at which register is kept**

**122.**—(1) A person to whom this Division applies shall keep the register of his interests in securities —

- (a) in the case of an individual, at his principal place of business; or
- (b) in the case of a corporation, at any of its places of business.

(2) Where a register of interests in securities is kept in electronic form, a person shall be deemed to be in compliance with subsection (1) if he ensures that full access to such register may be gained by the Authority at the place referred to in subsection (1)(a) or (b), as the case may be.

### **Defence to prosecution**

**123.**—(1) Where a person is charged with an offence in respect of a contravention of section 120 or 121, it shall be a defence for the person to prove —

- (a) that his contravention was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence; and
- (b) that —
  - (i) he was not so aware on the date of the summons; or
  - (ii) he became so aware before the date of the summons and complied with the relevant section within 14 days after becoming so aware.

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at a particular time of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in the securities concerned, was aware at that time.

### **Production of register**

**124.**—(1) The Authority may require any person to whom this Division applies to produce for inspection the register of his interests in securities, and the Authority may make a copy of or make extracts from the register.

- (2) Any person who —
  - (a) fails to produce the register of his interests in securities for inspection by the Authority; or
  - (b) fails to allow the Authority to make a copy of or make extracts from the register,

shall be guilty of an offence.

### **Extract of register**

**125.** The Authority may supply a copy of the extract of a register obtained pursuant to section 124 to any person who, in the opinion of the Authority, should in the public interest be informed of the dealing in securities disclosed in the register.

### *Division 2 – Disclosure by Substantial Shareholders*

### **Duty of substantial shareholders to notify securities exchange**

**126.**—(1) In the case of a company all or any of which shares are listed for quotation on the official list of a securities exchange, Division 4 of Part IV of the Companies Act (Cap.50) (other than sections 86, 87, 88, 89 and 92) shall apply, with such modifications

and qualifications as may be necessary, to a person who is a substantial shareholder as though references to the company to which notification should be given were references to the securities exchange, and such person shall comply with those provisions accordingly.

(2) Any person who fails to comply with sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

## PART VIII

## SECURITIES INDUSTRY COUNCIL AND TAKE-OVERS

**Securities Industry Council**

**127.**—(1) There shall be established an advisory body known as the Securities Industry Council.

(2) The function of the Securities Industry Council shall, in addition to the functions conferred upon it under this Part, be to advise the Minister on all matters relating to the securities industry.

(3) The Securities Industry Council shall consist of such representatives of business, government and the Authority as the Minister may appoint and those representatives shall serve for such period or periods as the Minister may decide.

(4) The Securities Industry Council shall have the power, in the exercise of its functions, to enquire into any matter or thing related to the securities industry and for this purpose, may summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

(5) Nothing in subsection (4) shall compel the production by an advocate and solicitor of a document containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document which is in his possession; but if the advocate and solicitor refuses to produce the document he shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on behalf of whom the communication was made.

(6) The Authority may from time to time consult the Securities Industry Council for the proper and effective implementation of this Act.

(7) For the purposes of this Act, every member of the Securities Industry Council —

(a) shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224); and

(b) shall have in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act the like protection and privileges as are by law given to a Judge in the execution of his office.

(8) The Securities Industry Council shall have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

(9) Subject to the provisions of this Act, the Securities Industry Council may regulate its own procedure and shall not be bound by the rules of evidence.

### **Take-overs and mergers**

**128.**—(1) This section and section 129 apply to and in relation to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all corporations or bodies unincorporate, whether incorporated or carrying on business in Singapore or not; and extend to acts done or omitted to be done outside Singapore.

(2) For the more effective administration, supervision and control of take-overs and mergers, the Authority shall, on the advice of the Securities Industry Council and pursuant to section 286, issue a non-statutory code to be known as the Take-over Code which shall be published in the *Gazette*.

(3) The Take-over Code shall apply to any take-over or merger transaction in relation to a public company, and all parties concerned in such a transaction shall comply with its provisions.

(4) The Take-over Code shall be administered and enforced by the Securities Industry Council.

(5) The Authority, on the advice of the Securities Industry Council, may from time to time revise the Take-over Code by deleting, amending or adding to the provisions thereof and any revision thereof shall be published in the *Gazette*.

(6) The Securities Industry Council may from time to time issue rulings on the interpretation of the general principles and rules in the Take-over Code and lay down the practice to be followed by parties concerned in a take-over or merger transaction and such rulings or practice shall be final and not be capable of being called in question in any court.

(7) A failure of any party concerned in a take-over or merger transaction to observe any of the provisions of the Take-over Code shall not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending



to establish or to negative any liability which is in question in the proceedings.

(8) Nothing in subsection (7) shall be construed as preventing the Securities Industry Council from invoking such sanctions (including public censure) as it may decide in relation to breaches of the Take-over Code by any party to a take-over or merger transaction.

(9) Where the Securities Industry Council has reason to believe that any party to a take-over or merger transaction or any person advising on a take-over or merger transaction is in breach of the provisions of the Take-over Code or is otherwise believed to have committed acts of misconduct in relation to or connected with a take-over or merger transaction, the Securities Industry Council shall have power to enquire into the suspected breach or misconduct and for this purpose may summon any person to give evidence on oath or affirmation, which it is hereby authorised to administer, or produce any document or material necessary for the purpose of the enquiry.

## **Offences**

**129.**—(1) A person who has no real intention to make an offer in the nature of a take-over offer shall not give notice or publicly announce that he intends to make a take-over offer.

(2) A person shall not make a take-over offer or give notice or publicly announce that he intends to make such an offer if he has no reasonable or probable grounds for believing that he will be able to perform his obligations if the offer is accepted.

(3) Where a person contravenes subsection (1) or (2), the person and, where the person is a corporation, every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both .

(4) In this section —

“take-over offer” means an offer for the acquisition of shares under a take-over scheme;

“take-over scheme” means a scheme involving the making of offers for the acquisition by or on behalf of a person of —

(a) some or all the shares in a public company or of some or all the shares of a particular class in a public company, to all members of the company, or where the

person already holds shares in the company, to all other members of the company ; or

- (b) all the remaining shares in a public company to all other members of the company which as a result of the person acquiring or consolidating effective control of that company within the meaning of the Take-over Code.

## PART IX

### SUPERVISION, INVESTIGATION AND ENFORCEMENT

#### *Division 1 - General Powers*

#### **When certain powers may be exercised**

**130.** A power conferred by this Part may only be exercised —

- (a) for the purposes of performing any of the Authority's functions under this Act or any subsidiary legislation made or written directions issued thereunder;
- (b) for the purposes of ensuring compliance with this Act or any subsidiary legislation made or written directions issued thereunder; or
- (c) in relation to an alleged or suspected contravention of this Act or any subsidiary legislation made or written directions issued thereunder.

#### **Disclosure to Authority**

**131.**—(1) The Authority may, where it considers it necessary for the protection of investors, require a holder of a capital markets services licence to deal in securities or trade in futures contracts, or an exempt person carrying on a business in the above-mentioned regulated activities, to disclose to it, in relation to any acquisition or disposal of securities or futures contracts, the name of the person from or through whom or on whose behalf the securities or futures contracts were acquired or to or through whom or on whose behalf the securities or futures contracts were disposed of and the nature of the instructions given to the holder or exempt person in respect of the acquisition or disposal.

(2) The Authority may require a person who has acquired, held or disposed of securities or futures contracts to disclose to it whether he acquired, held or disposed of those securities or futures contracts, as the case may be, as trustee for, or on behalf of, another person and, whether as a nominee or not and, if he acquired, held or disposed of those securities or futures contracts as trustee for, or on behalf of, another person, and whether as a nominee or not, to disclose the name of that other person and the nature of any instructions given to the first-mentioned person in respect of the acquisition, holding or disposal.

(3) The Authority may require a securities exchange or futures exchange to disclose to it, in relation to an acquisition or disposal of securities on the stock market of that securities exchange or futures contracts on the futures market of that futures exchange, the names of the members of that securities exchange or futures exchange who acted in the acquisition or disposal.

(4) The Authority may require a clearing house for a stock or futures market to disclose to it, in relation to any dealing in securities on that stock market or trading in futures contracts on that futures market, the names of the members of the clearing house who were concerned in any act or omission in relation to the dealing or trading.

(5) Where the Authority considers —

- (a) that it may be necessary to prohibit dealing in securities of, or made available by, a corporation pursuant to section 19 or to prohibit trading in futures contracts pursuant to section 20;
- (b) that a person may have contravened the provisions of Part XII in relation to securities of, or made available by, a corporation or in relation to futures contracts; or
- (c) that a person may have contravened a provision of Division 4 of Part IV of the Companies Act (Cap.50) or Division 2 of Part VII of this Act in relation to securities in a corporation,

the Authority may require —

- (i) a director, secretary or executive officer of the corporation referred to in paragraph (a), (b) or (c) to disclose to the Authority any information of which he is aware, being information that might have affected any dealing that has taken place, or that might affect any dealing that may take place, in securities of, or made available by, the corporation of which he is the director, secretary or executive officer, as the case may be; and
- (ii) a person whom the Authority believes on reasonable grounds to be capable of giving information concerning —
  - (A) any dealing in relevant securities or trading in relevant futures contracts;
  - (B) any advice given by a holder of a capital markets services licence to deal in securities or trade in

futures contracts, or a representative of such a holder, concerning relevant securities or futures contracts;

- (C) the issuing or publication of a report or analysis by a person holding a capital markets services licence to deal in securities or trade in futures contracts, or a representative of such a holder, concerning relevant securities or futures contracts;
- (D) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) a holder of a capital markets services licence to deal in securities or trade in futures contracts and has dealt in, traded in or given advice concerning, as the case may be, relevant securities or futures contracts;
- (E) the financial position of any business carried on by a nominee controlled by a person referred to in sub-paragraph (C) or jointly controlled by two or more persons at least one of whom is a person referred to in that sub-paragraph; or
- (F) an audit of, or any report of an auditor concerning, any book, account or record of a holder of a capital markets services licence to deal in securities or trade in futures contracts, being a book, account or record relating to dealings in relevant securities or trading in relevant futures contracts,

to disclose to the Authority the information that the person has in relation to the matters concerning which the Authority believes that the person is capable of giving information.

(6) For the purposes of subsection (5)(a), (b) and (c) “relevant securities”, “relevant futures contracts” or “relevant securities or futures contracts” means, securities or futures contracts referred to in those paragraphs.

(7) A person is not excused from disclosing information to the Authority pursuant to a requirement made of him under subsection (5) on the ground that the disclosure of the information might tend to incriminate him.

(8) Where a person claims, before making an oral statement disclosing information that he is required to disclose by a requirement made of him under subsection (5), that the statement might tend to incriminate him, evidence of that statement —

- (a) is not admissible in evidence against him in criminal proceedings other than proceedings under this section; and
- (b) is admissible in evidence for all the purposes of Part XII (other than for the purposes of any criminal proceedings instituted under or pursuant to that Part).

(9) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under subsection (1), (2), (3), (4) or (5) 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.

(10) A person who, in purported compliance with a requirement of the Authority under subsection (1), (2), (3), (4) or (5), discloses information, or makes a statement, that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(11) It is a defence to a prosecution for an offence under subsection (10) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(12) In this section a reference to disclosing information includes, in relation to information that is contained in a document, a reference to furnishing the document.

(13) A person shall not be subject to any liability by reason that the person complies with a requirement made or purporting to have been made under this section.

### **Power of court to make certain orders**

**132.**—(1) Where on the application of —

- (a) the Authority, it appears to the High Court that a person has committed an offence under this Act, or has contravened the conditions or restrictions of a licence or the business rules of a securities exchange, futures exchange or clearing house, or listing rules of a securities exchange, or is about to do an act with respect to dealing in securities or trading in futures contracts that, if done, would be such an offence or contravention;

- (b) a securities exchange, it appears to the High Court that a person has contravened the business rules or listing rules of the securities exchange;
- (c) of a futures exchange, it appears to the High Court that a person has contravened the business rules of the futures exchange; or
- (d) of a clearing house, it appears to the High Court that a person has contravened the business rules of the clearing house,

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

- (i) in the case of persistent or continuing breaches of this Act, or of the conditions or restrictions of a licence, or of the business rules of a securities exchange, futures exchange or clearing house, or listing rules of a securities exchange, an order restraining a person from carrying on a business of dealing in securities or trading in futures contracts, or acting as a representative of such a person, or from holding himself out as so carrying on business or so acting;
- (ii) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities or trading in any futures contracts that are specified in the order;
- (iii) an order appointing a receiver of the property of a holder of a capital markets services licence to deal in securities or trade in futures contracts or of property that is held by a such a holder for or on behalf of another person whether on trust or otherwise;
- (iv) an order declaring a contract relating to securities or futures contracts to be void or voidable;
- (v) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
- (vi) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such

persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order of the High Court under subsection (1) as a receiver of the property of a holder of a capital markets services licence to deal in securities or trade in futures contracts —

- (a) may require the holder to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;
- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the High Court specifies in the order.

(4) In subsections (1) and (3), “property”, in relation to a holder of a capital markets services licence to deal in securities or trade in futures contracts, includes moneys, securities, futures contracts and documents of title to securities, futures contracts or other property entrusted to or received on behalf of any other person by the holder or another person in the course of or in connection with a business of dealing in securities or trading in futures contracts carried on by the holder.

(5) Any person who, without reasonable excuse, fails to comply with —

- (a) an order under subsection (1) that is applicable to him; or
- (b) a requirement of a receiver appointed by order of the High Court under 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.

(6) Subsection (5) does not affect the powers of the High Court in relation to the punishment of contempts of court.

(7) The High Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.



**Power to appoint an inspector to investigate dealing in securities, etc.**

**133.**—(1) Notwithstanding anything in this Act, the Minister may, where it appears to him in the public interest to do so, appoint any person as an inspector to investigate any matter concerning dealing in securities, trading in futures contracts or leveraged foreign exchange trading and an inspector, so appointed, shall have all the powers conferred upon an inspector under Part IX of the Companies Act (Cap.50) and that Part shall apply to such investigation, with such modification and adaptation as may be necessary.

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

*Division 2 - Supervision*

**Inspection by Authority**

**134.**—(1) The Authority may, from time to time, inspect under conditions of secrecy, the books of —

- (a) an exchange holding company, a securities exchange, a futures exchange, a person operating an exempt market, a recognised trading system provider, a clearing house, a holder of a capital markets services licence, an exempt person, a representative or a trustee approved by the Authority under Division 3 of Part XIII; or
- (b) a person to whom an operational function of a person referred to paragraph (a) has been outsourced (other than a representative).

(2) For the purpose of an inspection under this section, a person referred to in subsection (1), under inspection, shall afford the Authority access to, and shall produce, its or his books and shall give such information and facilities as may be required to conduct the inspection.

(3) The Authority shall, at all times, have the power to copy or take possession of the books of a person referred to in subsection (1).

(4) Any person who fails without reasonable excuse, to produce any book or furnish any information or facilities in accordance with subsection (2) shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both 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.

### *Division 3 - Investigation*

#### Subdivision (1) - General

#### **Investigation by Authority**

**135.** The Authority may conduct such investigations as it considers necessary or expedient for the purposes and objectives set out in section 130.

#### Subdivision (2) – Examination of Persons

#### **Notice requiring appearance for examination**

**136.—**(1) For the purpose of an investigation conducted under this Division, the Authority may, by written notice in the prescribed form given to a person, require the person —

- (a) to give to the Authority all reasonable assistance in connection with the investigation; and
- (b) to appear before a named person appointed by the for examination on oath and to answer questions.

(2) A notice given under subsection (1) shall state the general nature of the matter referred to in subsection (1).

#### **Proceedings at examination**

**137.** The remaining provisions of this Division apply where, pursuant to a requirement made under section 136 for the purposes of an investigation under Division 1, a person (in this Subdivision called the “examinee”) appears before another person (in this Subdivision called the “investigator”) for examination.

#### **Requirements made of examinee**

**138.—**(1) The investigator may examine the examinee on oath or affirmation and may, for that purpose administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make will be true.

(3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under Division 1.

### **Examination to take place in private**

**139.**—(1) The examination shall take place in private and the investigator may give directions about who may be present during it, or during a part of it.

(2) A person shall not be present at the examination unless he is —

- (a) the investigator or the examinee;
- (b) a person approved by the Authority; or
- (c) entitled to be present by virtue of a direction under subsection (1).

### **Record of examination**

**140.**—(1) The investigator may, and shall, if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing —

- (a) the investigator may require the examinee to read it, or to have it read to him, and may require him to sign it; and
- (b) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

### **Giving to other persons copies of record**

**141.**—(1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to a lawyer acting on behalf of a person who is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination related.

(2) If the Authority gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or

control of the copy or a copy of it, shall not, except in connection with preparing, beginning or carrying on, or in the course of, any proceedings —

- (a) use the copy or a copy of it; or
- (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

(3) The Authority may, subject to such conditions as it may impose, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related book.

### **Copies given subject to conditions**

**142.** If a copy of a written record or a book is given to a person under section 140(2) or 141(3) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, shall comply with the conditions.

### **Record to accompany report**

**143.** If —

- (a) in the Authority's opinion, a statement made at an examination is relevant to any other investigation conducted under Division 1;
- (b) a record of the statement was made under section 140; and
- (c) a report about the other investigation is prepared under section 133,

a copy of the record shall accompany the report to be submitted to the Minister under section 133(2).

### **Penalties under this Subdivision**

**144.—(1)** A person who, without reasonable excuse, refuses or fails to comply with sections 136 and 138(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who, without reasonable excuse, refuses or fails to comply with sections 138(1), 140(2)(a), 141(2) and 142 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) A person who, in purported compliance with the provisions of this Subdivision or in the course of examination of the person, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

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

(5) A person who, without reasonable excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Subdivision 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.

### **Self-incrimination**

**145.**—(1) A person is not excused from disclosing information to the Authority pursuant to a requirement made of him under this Subdivision on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making an oral statement disclosing information that he is required to disclose by a requirement made of him under this Subdivision, that the statement might tend to incriminate him, evidence of that statement –

- (a) is not admissible in evidence against him in criminal proceedings other than proceedings under this section;
- (b) is admissible in evidence in civil proceedings under Part XII.

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

**146.**—(1) Nothing in this Subdivision shall compel the production by an advocate or solicitor of a document or other material containing a privileged communication made by or to him in that capacity or otherwise the taking of any such document or other material which is in his possession.

(2) If an advocate or solicitor refuses to produce the document or other material, he shall nevertheless be obliged to give the name and address of the person (if he knows them) to whom or by or on behalf of whom that communication was made.

### Subdivision (3) – Powers to obtain information

#### **Power to order production of books**

**147.** For the purpose of an investigation conducted under this Division, the Authority may, in writing, require any person to provide information or to produce books relating to any matter under investigation, and such person shall forthwith comply with that requirement.

#### **Application for warrant to seize books**

**148.—**(1) Where the Authority has reasonable grounds to suspect that there are on particular premises any books the production of which has been required by virtue of section 147, and —

- (a) which have not been produced in compliance with that requirement; or
- (b) which the Authority has reasonable grounds to believe will not be produced in compliance with that requirement,

the Authority may apply for the issue of a warrant to search the premises for those books.

(2) Whenever it appears to any magistrate, upon an application under subsection (1), and after any enquiry he may think necessary, that there are on particular premises any books the production of which have been required by virtue of section 147, and —

- (a) which have not been produced in compliance with that requirement; or
- (b) which the Authority has reasonable grounds to believe have not been produced in compliance with that requirement,

the magistrate may issue a warrant authorising the Authority and any person named therein, with or without assistance —

- (i) to search the premises and to break open and search anything, whether a fixture or not, in the premises; and
- (ii) to take possession of, or secure against interference, any books that appear to be books the production of which was so required.

(3) The powers conferred under subsections (1) and (2) are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(4) In this section, “premises” includes any structure, building, aircraft, vehicle, vessel or place.

**Powers where books are produced or seized**

**149.**—(1) This section applies where —

- (a) books are produced to the Authority under a requirement made under section 147;
- (b) under a warrant issued under section 148, the Authority or a person named therein —
  - (i) takes possession of books; or
  - (ii) secures books against interference; or
- (c) by virtue of a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.

(2) If subsection (1)(a) applies, the Authority may take possession of any of the books.

(3) The Authority or a person referred to in subsection (1) may —

- (a) inspect, and may make copies of, or take extracts from, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of a proceeding; and
- (c) retain possession of any of the books for so long as is necessary —
  - (i) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (4));
  - (ii) for a decision to be made about whether or not any proceedings to which the books concerned would be relevant should be begun; or
  - (iii) for such proceedings to be begun and carried on.

(4) No one is entitled, as against the Authority or a person referred to in subsection (1), to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books, are in the person’s possession, the person —

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

(b) may permit another person to inspect any of the books.

(6) Unless subsection (1)(b)(ii) applies, a person referred to in subsection (1) may deliver any of the books into the possession of the Authority or of a person authorised by it to receive them.

(7) If subsection (1)(a) or (b) applies, the Authority, a person referred to in subsection (1) or a person into whose possession the person delivers any of the books under subsection (5), may require —

(a) if paragraph (1)(a) applies, a person who so produced any of the books; or

(b) in any other case, a person who was a party to the compilation of any of the books,

to explain to the best of his or her knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

### **Powers where books are not produced**

**150.** Where a person fails to produce particular books in compliance with a requirement made by the Authority under section 147, the Authority may require the person to state, to the best of his or her knowledge and belief —

(a) the place where the books may be found; and

(b) the person who last had possession, custody or control of the books and the place where that person may be found.

### **Copies or extracts of books to be admitted in evidence**

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

(2) For the purposes of subsection (1), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit sworn, or by a declaration made,



before a person authorised to take affidavits or statutory declarations.

### **Penalties under this Subdivision**

**152.**—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement made under sections 147, 149(7) and 150 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.

(2) A person who, in purported compliance with a requirement made under this Subdivision furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

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

(4) A person, who conceals, destroys, mutilates or alters a book relating to a matter that the Authority is investigating or about to investigate under Division 1 or who, where such a book is within the territory of Singapore, takes or sends the book out of Singapore, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) A person, without reasonable excuse, who obstructs or hinders the Authority in the exercise of any power under this Subdivision, or obstructs or hinders a person who is executing a warrant issued under section 148 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) The occupier, or person in charge, of premises that a person enters under a warrant issued under section 148 who fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

### **Self-incrimination**

**153.**—(1) A person is not excused from disclosing information to the Authority pursuant to a requirement made of him under this Subdivision on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making an oral statement disclosing information that he is required to disclose by a requirement made of him under this Subdivision, that the statement might tend to incriminate him, evidence of that statement —

- (a) is not admissible in evidence against him in criminal proceedings other than proceedings under this Division; and
- (b) is admissible in evidence civil proceedings under Part XII.

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

**154.**—(1) Nothing in this Subdivision shall compel the production by an advocate or solicitor of a document or other material containing a privileged communication made by or to him in that capacity or otherwise the taking of any such document or other material which is in his possession.

(2) If an advocate or solicitor refuses to produce the document or other material, he shall nevertheless be obliged to give the name and address of the person (if he knows them) to whom or by or on behalf of whom that communication was made.

### *Division 4 - Enforcement*

#### **Use of material in proceedings**

**155.** Any books or other material which the Authority may obtain in the exercise of its powers of inspection or investigation may be used for the purposes of any proceedings instituted by the Authority under or pursuant to Part XII.

## PART X

## ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

**Interpretation of this Part**

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

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

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

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

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

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

“prescribed written law” means this Act or any of the following written law and any subsidiary legislation made thereunder —

- (a) Banking Act (Cap.19);
- (b) Finance Companies Act (Cap.108);
- (c) Financial Advisers’ Act 2001;
- (d) Insurance Act (Cap.142);
- (e) Insurance Intermediaries Act (Cap.142A)
- (f) Monetary Authority of Singapore Act (Cap.186);
- (g) Money-changing and Remittance Businesses Act (Cap.187); or
- (h) such other written law as the Minister may prescribe;

“regulatory authority” , in relation to a foreign country, means an authority of the foreign country exercising any function

that corresponds to a regulatory function of the Authority under this Act;

“supervision” means the taking of any action for or in connection with the supervision of —

- (a) a person operating a stock market or futures market, intermediary or any other person regulated by the regulatory authority concerned; or
- (b) the issuance of or trading in securities, or the trading in futures contracts in the foreign country of the regulatory authority concerned.

### **Conditions for provision of assistance**

**157.**—(1) The Authority, or a person authorised by the Authority, may provide the assistance referred to in section 159 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request by the regulatory authority for assistance is received by the Authority on or after 6th March 2000;
- (b) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out supervision, investigation or enforcement;
- (c) the contravention of the law or regulatory requirement to which the request relates took place on or after 6th March 2000;
- (d) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
- (e) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (f)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;
- (f) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;

- (g) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
  - (h) the matter to which the request relates is of sufficient gravity; and
  - (i) the rendering of assistance will not be contrary to the public interest or the interest of the investing public.
- (2) For the purposes of subsection (1)(e) and (f), “designated third party”, in relation to a foreign country, means —
- (a) any person or body responsible for supervising the regulatory authority in question;
  - (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
  - (c) any authority of the foreign country, other than the regulatory authority, exercising a function that corresponds to a regulatory function of the Authority under this Act.

### **Other factors to consider for provision of assistance**

**158.** In deciding whether to grant a request for assistance from a regulatory authority of a foreign country for assistance referred to in section 159, the Authority may also have regard to the following:

- (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act or any regulations made thereunder;
- (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance;
- (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

### **Assistance that may be rendered**

**159.**—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;
- (b) order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
- (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
- (d) order a person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or
- (e) request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1)(c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1)(b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any rule of law, any prescribed written law or any requirement imposed thereunder, any contract or any rule of professional conduct.

(4) Nothing in this section shall compel an advocate and solicitor —

- (a) to furnish or transmit any material or copy thereof that contains; or
- (b) to disclose,

a privileged communication made by or to him in that capacity.

(5) If the advocate and solicitor refuses to furnish or transmit the material or copy or to disclose such privileged communication, he shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on behalf of whom the communication was made.

(6) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement —

- (a) is not admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 160; but
- (b) is admissible in evidence in civil proceedings under Part XII.

### **Offences**

**160.** Any person who —

- (a) without reasonable excuse refuses or fails to comply with an order under section 159(1)(b), (c) or (d); or
- (b) in purported compliance with an order under section 159(1)(b) or (c), furnishes to the Authority or transmits to the regulatory authority any material or copy known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 159(1)(d), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

### **Immunities**

**161.**—(1) No civil or criminal proceedings, other than proceedings for an offence under section 160, shall lie against any person for —

- (a) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 159(1)(b) or (c);

- (b) making a statement to the Authority in good faith and in compliance with an order made under section 159(1)(d);  
or
- (c) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1)(a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any rule of law, any prescribed written law or any requirement imposed thereunder, any contract or any rule of professional conduct.

PART X(21.3.01)(NJ)



## PART XI

## INVESTOR COMPENSATION SCHEME

**Interpretation of this Part**

**162.** In this Part, “member”, in relation to a securities exchange or futures exchange, means a person who —

- (a) holds membership of any class or description of a securities exchange or futures exchange, whether or not he holds any share in the share capital of such exchange; and
- (b) is licensed by the Authority to carry on the business of dealing in securities or trading in futures contracts, as the case may be.

**Establishment of fidelity fund**

**163.**—(1) Each securities exchange and each futures exchange shall establish, keep and administer a fidelity fund (referred to in this Part as a fidelity fund or fund).

(2) The assets of the fidelity fund of a securities exchange or futures exchange shall —

- (a) be the property of the exchange;
- (b) be kept separate from all other property of the exchange; and
- (c) be held in trust for the purposes set out in this Part.

**Moneys constituting fidelity fund**

**164.** The fidelity fund of a securities exchange or futures exchange shall consist of —

- (a) all moneys paid to the exchange by its members in accordance with this Part;
- (b) all moneys paid to the fund by the exchange;
- (c) all interest and profits from time to time accruing from the investment of the fund;
- (d) all moneys recovered by or on behalf of the exchange in the exercise of any right of action conferred by this Part;
- (e) all monies paid by an insurer pursuant to a contract of insurance or indemnity entered into by the exchange under section 180; and
- (f) all other moneys lawfully paid into the fund.

### **Fund to be kept in separate bank account**

**165.** All moneys forming part of a fidelity fund shall, pending the investment or application thereof in accordance with this Part, be kept in a separate bank account in Singapore.

### **Payments out of fidelity fund**

**166.** Subject to this Part, there shall from time to time be paid out of the fidelity fund of a securities exchange or futures exchange as required and in such order as the exchange considers proper —

- (a) the amount of all claims, including costs, allowed by the exchange or established against the exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the exchange under section 180;
- (d) all expenses incurred or involved in the administration of the fund, including the salaries and wages of persons employed by the exchange in relation thereto; and
- (e) all other moneys payable out of the fund in accordance with this Act.

### **Accounts of fund**

**167.—(1)** A securities exchange or futures exchange shall establish and keep proper accounts of its fidelity fund and shall, before 31st March in each year, cause a balance-sheet in respect of such accounts to be made out as at the preceding 31st December.

(2) The securities exchange or futures exchange shall appoint an auditor to audit the accounts of the fidelity fund.

(3) The auditor appointed by the securities exchange or futures exchange shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance-sheet and cause it to be laid before the exchange not later than 3 months after the balance-sheet was made out.

### **Fidelity fund to consist of amount of \$20 million, etc.**

**168.** The fidelity fund of a securities exchange or futures exchange shall consist of an amount of not less than —

- (a) \$20 million; or
- (b) such other amount as the Minister may, by order published in the *Gazette*, specify in substitution of the amount specified under paragraph (a),

to be paid to the credit of the fund on the establishment of the exchange under this Act or at any time after its establishment as determined by the Minister.

### **Provisions if fund is reduced below minimum amount**

**169.** If the fidelity fund of a securities exchange or a futures exchange is reduced below the minimum amount referred to in section 168, the exchange shall take steps to make up the deficiency —

- (a) by transferring an amount that is equal to the deficiency from other funds of the exchange to the fidelity fund; and
- (b) in the event that there are insufficient funds to transfer under paragraph (a), by requiring each member of the exchange to contribute to the fund such amount as the exchange may determine.

### **Levy to meet liabilities**

**170.—(1)** If at any time a fidelity fund is not sufficient to satisfy the liabilities that are then ascertained of a securities exchange or futures exchange in relation thereto, the exchange may impose on every member by a levy of such amount as it thinks fit or, if ordered by the Authority, shall impose a levy of such sum which shall in the aggregate be equivalent to the amount so specified in the order.

(2) The amount of such levy shall be paid within the time and in the manner specified by the securities exchange or futures exchange either generally or in relation to any particular case.

(3) No member of an exchange shall be required to pay by way of levy under this section more than \$300,000 in the aggregate in any particular case.

### **Investment of fund**

**171.** Any moneys in a fidelity fund that are not immediately required for its purposes may be invested by the securities

exchange or futures exchange in any manner in which trustees are for the time being authorised by law to invest trust funds.

### **Application of fund**

**172.**—(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating any person (other than an accredited investor) who suffers pecuniary loss because of a defalcation committed —

(a) in the course of, or in connection with, a dealing in securities, or the trading of a futures contract

(b) by a member of a securities exchange or futures exchange or by any representative of such member; and

(c) in relation to any money or other property which, after the establishment of the fidelity fund —

(i) was entrusted to or received by that member or by any of its representatives for or on behalf of any other person; or

(ii) was entrusted to or received by that member either as the sole trustee or as trustee with any other person or persons, or by any of its representatives as trustee or for or on behalf of the trustees of that money or property.

(2) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Bankruptcy Act (Cap.20) an amount not greater than the amount that the Official Assignee or the trustee in bankruptcy, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt, who is a member of a securities exchange or futures exchange, are insufficient to satisfy any debts arising from dealings in securities or trading in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt member.

(3) Subsection (2) shall apply in the case of a member of a securities exchange or futures exchange who has made a voluntary arrangement with his creditors under Part V of the Bankruptcy Act in like manner as that subsection applies in the case of a member who has become bankrupt.

(4) For the purposes of subsection (3) —

(a) a reference to a trustee in bankruptcy in subsection (2) shall be deemed to be a reference to a nominee within the meaning of Part V of the Bankruptcy Act;

- (b) a reference to debts proved in bankruptcy in subsection (2) shall be deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part V of the Bankruptcy Act; and
- (c) a reference to the bankrupt in subsection (2) shall be deemed to be a reference to the person who made the voluntary arrangement under Part V of the Bankruptcy Act.

(5) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to a liquidator of a member of a securities exchange or futures exchange that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member are insufficient to satisfy any debts arising from dealings in securities or trading in futures contracts that have been proved in the liquidation of the member.

(6) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1), no claim for a payment under subsection (2) or (5) shall be made in respect of the same pecuniary loss.

(7) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (2), no claim for compensation under subsection (1) or for a payment under subsection (5) shall be made in respect of the same deficiency.

(8) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (5), no claim for compensation under subsection (1) or for a payment under subsection (2) shall be made in respect of the same deficiency.

(9) Moneys paid under subsection (2) or (5) may only be applied by the Official Assignee, trustee in bankruptcy, nominee or liquidator, as the case may be, for the purpose of satisfying debts arising from dealings in securities or trading in futures contracts, and for no other purpose.

(10) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund under this Part for the purpose of —

- (a) compensating pecuniary loss under subsection (1); or
- (b) making a payment under subsection (2) or (5),

shall not, in respect of each member, exceed the prescribed amount.

(11) Subject to the provisions of this section —

- (a) the amount that may be paid out of the fidelity fund to each claimant under subsection (1) in relation to each member; or
- (b) the amount that the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator may pay to each creditor of a member from any amount paid to the Official Assignee, trustee in bankruptcy, nominee or liquidator, as the case may be, under subsection (2) or (5),

shall not exceed the prescribed amount.

(12) For the purposes of subsections (10) and (11), any amount paid from the fidelity fund shall, to the extent to which the fund is subsequently reimbursed therefor, be disregarded.

(13) For the purposes of this section, “representative”, in relation to a member of a securities exchange or futures exchange, includes a person who has been, but at the time of any defalcation in question has ceased to be, a director, an officer or an employee of the member if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director, an officer or an employee of the member.

(14) Nothing in this Part shall be construed as to allow a person to claim compensation against the fidelity fund of a futures exchange if —

- (a) the person has suffered pecuniary loss because of a defalcation committed by a member of the exchange or by any representative of the member; and
- (b) such defalcation is in respect of moneys deposited by that person with the member or moneys belonging to that person held by that member, in connection with the trading of a contract which is not a futures contract that is cleared or to be cleared by a clearing house or a futures exchange in Singapore.

### **Claims against fund**

**173.**—(1) Subject to this Part, every person who suffers pecuniary loss as provided in section 172, shall be entitled to claim compensation from the fidelity fund and to take proceedings in the High Court as provided in this Act against the securities exchange or futures exchange to establish such claim.

(2) A person shall in no case have any claim against the fidelity fund in respect of a defalcation in respect of money or other

property which prior to the commission of the defalcation had, in the due course of the administration of a trust, ceased to be under the sole control of the director or directors of the member of the securities exchange or futures exchange.

### **Notice calling for claims against fund**

**174.**—(1) A securities exchange or futures exchange may cause to be published in a daily newspaper published and circulating generally in Singapore a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the date of publication, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

(2) A claim for compensation from a fidelity fund in respect of a defalcation shall be made in writing to the securities exchange or futures exchange, as the case may be —

- (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or
- (b) where no such notice has been published, within 6 months after the claimant became aware of the defalcation.

(3) Any claim which is not made in accordance with subsection (2) shall be barred unless the securities exchange or futures exchange otherwise allows.

(4) No action for damages shall lie against a securities exchange or futures exchange or against any member or employee of the exchange by reason of any notice published in good faith and without malice for the purposes of this section.

### **Power of exchange to settle claims**

**175.**—(1) A securities exchange or futures exchange may, subject to this Part, allow and settle any proper claim for compensation from a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

(2) Subject to subsection (3), a person shall not commence proceedings under this Part against a securities exchange or futures exchange without the consent of the exchange unless —

- (a) the exchange has disallowed his claim; and
- (b) the claimant has exhausted all relevant rights of action and other legal remedies for recovery of the money or other property, in respect of which the defalcation was committed, available against a member of the exchange in

relation to whom or to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.

(3) A person who has been refused consent by a securities exchange or futures exchange may apply for leave to a Judge of the High Court in chambers who may make such order in the matter as he thinks fit.

(4) A securities exchange or futures exchange shall, after disallowing (whether wholly or partly) any claim for compensation from a fidelity fund, serve notice of such disallowance in the prescribed form on the claimant or his solicitor.

(5) No proceedings against a securities exchange or futures exchange in respect of a claim which has been disallowed by the exchange shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

(6) In any proceedings brought to establish a claim —

(a) evidence of any admission or confession by, or other evidence which would be admissible against, the member of a securities exchange or futures exchange or other person by whom it is alleged a defalcation was committed, shall be admissible to prove the commission of the defalcation, notwithstanding that the member or other person is not the defendant in or a party to those proceedings; and

(b) all defences which would have been available to that member or person shall be available to the exchange.

(7) A securities exchange or futures exchange or, where proceedings are brought to establish a claim, the High Court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the exchange or the High Court, as the case may be, acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the defalcation.

### **Power of exchange to require production of evidence**

**176.** A securities exchange or futures exchange may, at any time and from time to time, require any person to produce and deliver any contract note, document or statement of evidence necessary to support any claim made, or necessary for the purpose either of exercising its rights against a member of an exchange or the



directors of that member or any other person concerned, or of enabling criminal proceedings to be taken against any person in respect of a defalcation, and in default of delivery of any such contract, document or statement of evidence by such first-mentioned person, the exchange may disallow any claim by him under this Part.

**Subrogation of exchange to rights, etc., of claimant upon payment from fund**

**177.** On payment out of a fidelity fund of any moneys in respect of any claim under this Part, the securities exchange or futures exchange shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him by reason of the defalcation on which the claim was based.

**Payment of claims only from fund**

**178.** No moneys or other property belonging to a securities exchange or futures exchange, other than the fidelity fund, shall be available for the payment of any claim under this Part, whether the claim is allowed by the exchange or is made the subject of an order of the High Court.

**Provision where fund insufficient to meet claims or where claims exceed total amount payable**

**179.—(1)** Where the amount at credit in a fidelity fund is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders of the High Court have been made, then the amount at credit in the fund shall, subject to subsection (2), be apportioned between the claimants in such manner as the securities exchange or futures exchange thinks equitable, and any such claim so far as it then remains unpaid shall be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the High Court have been made in relation to defalcations by or in connection with a member of a securities exchange or futures exchange exceeds the total amount which may, pursuant to section 172(10), be paid under this Part in respect of that member, then such total amount shall be apportioned between the claimants in such manner as the exchange thinks equitable.

(3) Upon payment out of the fund of such total amount in accordance with the apportionment of all such claims under subsection (2), any order relating thereto and all other claims against the fund which may thereafter arise or be made in respect of defalcations by or in connection with that member shall be absolutely discharged.

### **Power of exchange to enter into contracts of insurance**

**180.**—(1) A securities exchange or futures exchange may in its discretion enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Singapore whereby the exchange will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part.

(2) Any such contract may be entered into in relation to members generally, or in relation to any particular member or members named therein, or in relation to members generally with the exclusion of any particular member or members named therein.

(3) No action shall lie against a securities exchange or futures exchange or against any member or employee of an exchange for injury alleged to have been suffered by any other member by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

### **Application of insurance moneys**

**181.** No claimant against a fidelity fund shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or have any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

## PART XII

## MARKET CONDUCT

*Division 1 – Prohibited Conduct - Securities***Application of Division**

**182.** This Division applies to —

- (a) acts and omissions occurring within Singapore in relation to securities of any corporation or otherwise, whether formed or carrying on business or listed on a stock market in Singapore or not outside Singapore; and
- (b) acts and omissions occurring outside Singapore, in relation to securities of any corporation or otherwise, that is formed or carrying on business or listed on a stock market in Singapore, securities quoted on a stock market in Singapore, securities accessible from Singapore; or
- (c) acts and omissions occurring outside Singapore in relation to securities which otherwise affect investors in Singapore.

**False trading and market rigging transactions**

**183.—**(1) No person shall create or do anything that is intended or likely to create, a false or misleading appearance —

- (a) of active trading in any securities on a stock market; or
- (b) with respect to the market for, or the price of, such securities.

(2) No person shall, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transactions or devices, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without affecting the generality of subsection (1), a person who —

- (a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;

- (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price, shall be deemed to have created a false or misleading appearance of active trading in securities on a stock market.

(4) In a prosecution of a person for a contravention of subsection (1) it is a defence if the defendant establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a stock market.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In a prosecution for a contravention of subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in subsection (3)(a) to a transaction of sale or purchase of securities includes —

- (a) a reference to the making of an offer to sell or purchase securities; and

- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

### **Stock market manipulation**

**184.**—(1) No person shall effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of raising the price of securities of the corporation on a stock market, with intent to induce other persons to purchase or subscribe for securities of the corporation or of a related corporation.

(2) No person shall effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of lowering the price of securities of the corporation on a stock market, with intent to induce other persons to sell securities of the corporation or of a related corporation.

(3) No person shall effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have or are likely to have, the effect of maintaining or stabilising the price of securities of the corporation on a stock market with intent to induce other persons to sell, purchase or subscribe for securities of the corporation or of a related corporation.

(4) A reference in this section to a transaction, in relation to securities of a corporation, includes —

- (a) a reference to the making of an offer to sell or purchase such securities of the corporation; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase such securities of the corporation.

### **False or misleading statements, etc.**

**185.** No person shall make a statement, or disseminate information, that is false or misleading in a material particular and —

- (a) is likely to induce other persons to subscribe for securities;

- (b) is likely to induce the sale or purchase of securities by other persons; or
  - (c) is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities,
- if, when he makes the statement or disseminates the information —
- (i) he does not care whether the statement or information is true or false; or
  - (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

### **Fraudulently inducing persons to deal in securities**

**186.**—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in securities or a class of securities.

(2) It is a defence to a prosecution for a contravention of subsection (1) constituted by recording or storing information as mentioned in paragraph (d) thereof if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

### **Employment of manipulative and deceptive devices**

**187.** No person shall, directly or indirectly, in connection with the subscription, purchase or sale of any securities —

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person; or

- (c) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

### **Dissemination of information about illegal transactions**

**188.** No person shall circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that corporation, or of a corporation that is related to that corporation, which to his knowledge, was entered into or done in contravention of sections 183 to 187 if —

- (a) the person, or a person associated with the person, has entered into any such transaction or done any such act or thing; or
- (b) the person has received, or expects to receive directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.

### **Continuous disclosure**

**189.**—(1) Where a corporation which is admitted to the official list of a securities exchange or a manager of a collective investment scheme the units of which are quoted on a securities exchange is required by the listing rules of the securities exchange to notify the securities exchange of information about specified events or matters as they arise for the purpose of the securities exchange making that information available to a stock market operated by the securities exchange, the corporation or manager must not intentionally, recklessly or negligently fail to notify the securities exchange of information —

- (a) that is not generally available; and
- (b) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of the corporation or units of the collective investment scheme quoted on the stock market of the securities exchange.

(2) A contravention of subsection (1) is an offence only if the failure concerned is intentional or reckless.

(3) For the purposes of this section, “manager” has the same meaning as in Division 3 of Part XIII.

**Section 189 - when information is generally available**

**190.** For the purposes of section 189, information is generally available if —

- (a) it consists of readily observable matter;
- (b) without limiting the generality of paragraph (a),
  - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and
  - (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
- (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
  - (i) information referred to in paragraph (a);
  - (ii) information made known as referred to in paragraph (b)(i).

**Section 189  $\frac{3}{4}$  material effect on price or value**

**191.** For the purposes of section 189, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, the first-mentioned securities.

**Section 189 -- inapplicability to particular information**

**192.** Section 189 does not apply to particular information where —

- (a) a reasonable person would not expect the information to be disclosed;
- (b) the information, if immediately disclosed, would materially prejudice the interests of the corporation and investors in the corporation, or the interests of the collective investment scheme and investors in the collective investment scheme, as the case may be; or



- (c) one or more of the following applies:
- (i) it would be a breach of law to disclose the information;
  - (ii) the information concerns an incomplete proposal or negotiation;
  - (iii) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
  - (iv) the information is generated for the internal management purposes of the entity; and
  - (v) the information is a trade secret.

### **Penalties**

**193.**—(1) Any person who contravenes any provision of this Division shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of a person who is not a corporation, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both; or
- (b) in the case of a corporation, to a fine not exceeding \$500,000.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 221 for the contravention.

### *Division 2 – Prohibited Conduct – Futures Contracts*

### **Application of Division**

**194.** This Division applies to —

- (a) acts and omissions occurring within Singapore in relation to futures contracts or foreign exchange in connection with leveraged foreign exchange trading, whether traded on a futures market or foreign exchange market in Singapore or outside Singapore; and
- (b) acts and omissions occurring outside Singapore, in relation to futures contracts or foreign exchange in connection with leveraged foreign exchange trading, that is traded on a futures market or foreign exchange market in Singapore, futures contracts or foreign exchange in connection with leveraged foreign exchange trading

accessible from Singapore, or acts and omissions occurring outside Singapore in relation to futures contracts or foreign exchange in connection with leveraged foreign exchange trading which otherwise affect investors in Singapore.

### **False trading**

**195.** No person shall create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading on a foreign exchange market, or a false or misleading appearance with respect to the market for, or the price of futures contracts on a futures market or foreign exchange in connection with leveraged foreign exchange trading.

### **Bucketing**

**196.**—(1) No person shall knowingly execute, or hold himself out as having executed, an order for the purchase or sale of a futures contract on a futures market, without having effected a bona fide purchase or sale of the futures contract in accordance with the business rules and practices of the futures market.

(2) No person shall knowingly execute, or hold himself out as having executed, an order to make a purchase or sale of foreign exchange in connection with leveraged foreign exchange trading on a foreign exchange market, without having effected a bona fide purchase or sale in accordance with the order.

### **Manipulation of price of futures contract and cornering**

**197.** No person shall, directly or indirectly —

- (a) manipulate or attempt to manipulate the price of a futures contract that may be dealt in on a futures market, or of any commodity which is the subject of such futures contract; or
- (b) corner, or attempt to corner, any commodity which is the subject of a futures contract.

### **Fraudulently inducing trading in futures contracts**

**198.**—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;

- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to trade in a futures contract, or a class of futures contracts, or engage in leveraged foreign exchange trading.

(2) It is a defence to a prosecution for a contravention of subsection (1) constituted by recording or storing information as mentioned in paragraph (d) thereof if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

#### **Employment of fraudulent or deceptive devices, etc.**

**199.** No person shall, directly or indirectly, in connection with any transaction involving trading in a futures contract or leveraged foreign exchange trading —

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person ; or
- (c) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

#### **Dissemination of information about false trading**

**200.** No person shall circulate, disseminate, or authorise, or be concerned in, the circulation or dissemination of, any statement or information to the effect that the price of a class of futures contracts or foreign exchange in connection with leveraged foreign exchange trading will, or is likely to, rise or fall or be maintained because of the market operations of one or more persons which, to his knowledge, are conducted in contravention of section 195 to 199.

## **Penalties**

**201.**<sup>3/4</sup>(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of a person who is not a corporation, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both; or
- (b) in the case of a corporation, to a fine not exceeding \$500,000.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 221 for the contravention.

### *Division 3 – Insider Trading*

## **Application of Division**

**202.** This Division applies to —

- (a) acts and omissions occurring within Singapore in relation to securities of any corporation or otherwise, whether formed or carrying on business or listed on a stock market or securities quoted on a stock market or traded on a futures market in Singapore or outside Singapore; and
- (b) acts and omissions occurring outside Singapore, in relation to securities of a corporation or otherwise that is formed or carries on business or is listed on a stock market in Singapore, securities quoted on a stock market or traded on a futures market in Singapore, securities accessible from Singapore, or acts and omissions occurring occurring outside Singapore in relation to securities which otherwise affect investors in Singapore.

## **Interpretation of this Division**

**203.** For the purposes of this Division —

“information” includes —

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;
- (b) matters relating to the intentions, or the likely intentions, of a person;

- (c) matters relating to negotiations or proposals with respect to —
  - (i) commercial dealings; or
  - (ii) dealing in securities;
- (d) information relating to the financial performance of a corporation or otherwise;
- (e) information that a person proposes to enter into, or had previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and
- (f) matters relating to the future.

“purchase”, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party, acquiring the option or right under the contract, or taking an assignment of the option or right, whether or not on another’s behalf;

“securities” means —

- (a) debentures, stocks, bonds or notes issued or proposed to be issued by a government;
- (b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a corporation or unincorporate;
- (c) any right, option or derivative in respect of any such debentures, stocks, shares, bonds or notes;
- (d) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
  - (i) the value or price of any such debentures, stocks, shares, bonds or notes;
  - (ii) the value or price of any group of any such debenture, stocks, shares, bonds or notes;
  - (iii) an index of any such debenture, stocks, shares bonds or notes; or
- (e) any unit in a collective investment scheme as defined in section 259,

but does not include —

- (i) bills of exchange;
- (ii) promissory notes; or
- (iii) certificates of deposit issued by a bank or finance company;

“sell”, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party —

- (a) grant or assign the option or right; or
- (b) take, or cause to be taken, such action as releases the option or right,

whether or not on another’s behalf.

### **Information generally available**

**204.** For the purposes of this Division, information is generally available if —

- (a) it consists of readily observable matter;
- (b) without limiting the generality of paragraph (a),
  - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and
  - (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
- (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
  - (i) information referred to in paragraph (a);
  - (ii) information made known as referred to in paragraph (b)(i).

### **Material effect on price or value of securities**

**205.** For the purposes of this Division, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

### **Trading and procuring trading in securities**

**206.**—(1) Trading in securities that is ordinarily permitted on the stock market or futures market is taken for the purposes of this Division to be permitted on that stock market or futures market even though trading in any such securities on that stock market or futures market is suspended.

(2) For the purposes of this Division but without limiting the meaning that the expression *procure* has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

### **Prohibited conduct by person in possession of inside information**

**207.**—(1) Subject to this Division, where —

- (a) a person (referred to in this section, section 208 and section 209 as the *insider* ) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities; and
- (b) the insider knows that —
  - (i) the information is not generally available; and
  - (ii) if it were generally available, it might have a material effect on the price or value of those securities,

the following subsections apply.

(2) The insider must not (whether as principal or agent) —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

(3) Where trading in the securities referred to in subsection (1) is permitted on the stock market of a securities exchange or futures market of a futures exchange, the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

**Prohibited conduct by connected person in possession of inside information**

**208.**—(1) Subject to this Division, and without prejudice to section 207, where —

- (a) an insider who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation; and
- (b) the insider knows or ought reasonably to know that —
  - (i) the information is not generally available; and
  - (ii) if it were generally available, it might have a material effect on the price or value of those securities,

the following subsections apply.

- (2) The insider must not (whether as principal or agent) —
  - (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
  - (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.
- (3) Where trading in the securities referred to in subsection (1) is permitted on the stock market of a securities exchange or futures market of a futures exchange, the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —
  - (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
  - (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.



(4) In a prosecution of a person for a contravention of subsection (2) or (3), where the prosecution proves that the insider who is connected to a corporation knows or ought reasonably to know that he possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation, it shall be presumed that such a connected person knows, or ought reasonably to know, that the information is not generally available; and if it were generally available, it might have a material effect on the price or value of those securities, unless he can prove otherwise, on a balance of probabilities.

(5) In this Division, a person is connected with a corporation if, —

- (a) he is an officer of that corporation or of a related corporation;
- (b) he is a substantial shareholder within the meaning of Division 4 of Part IV of the Companies Act (Cap.50) in that corporation or in a related corporation; or
- (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which this section applies by virtue of —
  - (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is an officer) and that corporation or a related corporation; or
  - (ii) his being an officer of a substantial shareholder within the meaning of Division 4 of Part IV of the Companies Act in that corporation or in a related corporation.

(6) For the purposes of subsection (5), “officer”, in relation to a corporation, includes —

- (a) a director, secretary, executive officer or employee of the corporation;
- (b) a receiver, or receiver and manager, of property of the corporation;
- (c) a judicial manager of the corporation;
- (d) a liquidator of the corporation; and

- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

### **Proof of contravention of section 207 or 208**

**209.**—(1) For the avoidance of doubt, in an action against a person for a contravention of section 207 or 208, it is not necessary to prove that the insider intended to use the information referred to in section 207(1)(a) or 208(1)(a) in contravention of section 207 or 208, as the case may be.

(2) In an action against a person for a contravention of section 207 or 208, it is not necessary to prove the non-existence of facts or circumstances which if they existed would, by virtue of section 211, sections 212 to 219, or any regulations made under section 295 of this Act, preclude the act from constituting a contravention of section 207 or 208, as the case may be.

### **Penalties**

**210.**—(1) A person who contravenes or fails to comply with section 207 or 208, shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of a person who is not a corporation, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both; or
- (b) in the case of a corporation, to a fine not exceeding \$500,000.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 207 or 208 after a court has made an order against him for the payment of a civil penalty under section 221 for the contravention.

### **Exception for withdrawal from registered scheme**

**211.**—(1) Section 207(2) and section 208(2) shall not apply in respect of the redemption by a trustee or manager under a trust deed relating to a collective investment scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets, less any liabilities of the collective investment trust scheme to which the units of the collective investment scheme relates, and less any reasonable charge for purchasing the units of the collective investment scheme.

(2) For the purpose of this section, “manager” has the same meaning as in Division 3 of Part XIII.

**Exception for underwriters**

**212.**—(1) Section 207(2) and section 208(2) does not apply in respect of —

- (a) subscribing for securities under an underwriting agreement or a sub-underwriting agreement; or
- (b) entering into an agreement referred to in paragraph (a); or
- (c) selling securities subscribed for under an agreement referred to in paragraph (a).

(2) Section 207(3) and section 208(3) does not apply in respect of —

- (a) the communication of information in relation to securities to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or
- (b) the communication of information in relation to securities by a person who may be required under an underwriting agreement to subscribe for any such securities if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:
  - (i) enter into a sub-underwriting agreement in relation to any such securities;
  - (ii) subscribe for any such securities.

**Exception for purchase pursuant to legal requirement**

**213.** Sections 207(2) and 208(2) do not apply in respect of the purchase of securities pursuant to a requirement imposed by a written law.

**Exception for information communicated pursuant to a legal requirement**

**214.** Sections 207(3) and 208(3) do not apply in respect of the communication of information pursuant to a requirement imposed by the State or any regulatory authority.

**Attribution of knowledge within corporations**

**215.**—(1) For the purposes of this Division —

- (a) a corporation is taken to possess any information which an officer of the corporation possesses and which came into his possession in the course of the performance of duties as such an officer; and
  - (b) if an officer of a corporation knows or ought reasonably to know any matter or thing because he is an officer of the corporation, it is to be presumed that the corporation knows or ought reasonably to know that matter or thing.
- (2) A corporation does not contravene section 207(2) or 208(2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the corporation if —
- (a) the decision to enter into the transaction or agreement was taken on its behalf by a person other than that officer; and
  - (b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person who made the decision and that no advice with respect to the transaction or agreement was given to that person by a person in possession of the information; and
  - (c) the information was not so communicated and no such advice was so given.

**Attribution of knowledge within partnerships, etc.**

**216.**—(1) For the purposes of this Division —

- (a) a partner of a partnership is taken to possess any information —
  - (i) which another partner of the partnership possesses and which came into the other partner's possession in his capacity as a partner of the partnership; or
  - (ii) which an employee of the partnership possesses and which came into his possession in the course of the performance of duties as such an employee; and
- (b) if a partner or employee of a partnership knows or ought reasonably to know any matter or thing in his capacity as a partner or employee, it is to be presumed that every partner of the partnership knows or ought reasonably to know that matter or thing.

(2) The partners of a partnership do not contravene section 207(2) or 208(2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the partners, or an employee or employees of the partnership, are in actual possession of information if —

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:
  - (i) a partner who is taken to have possessed the information merely because another partner, or an employee of the partnership, was in possession of the information;
  - (ii) an employee of the partnership who was not in possession of the information; and
- (b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

(3) A partner of a partnership does not contravene section 207(2) or 208(2) by entering into a transaction or agreement otherwise than on behalf of the partnership merely because he is taken to possess information that is in the possession of another partner or an employee of the partnership.

#### **Exception for knowledge of person's own intentions or activities**

**217** A natural person does not contravene section 207(2) or 208(2) by entering into a transaction or agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

#### **Exception for corporations and its officers, etc.**

**218.—(1)** A corporation does not contravene section 207(2) or 208(2) by entering into a transaction or agreement in relation to securities merely because it is aware that it proposes to enter into

or has previously entered into, one or more transactions or agreements in relation to those securities.

(2) Subject to subsection (3), a corporation does not contravene section 207(2) or 208(2) by entering into a transaction or agreement in relation to securities merely because an officer of the corporation is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(3) Subsection (2) does not apply unless the officer of the corporation in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

(4) Subject to subsection (5), a person does not contravene section 207(2) or 208(2) by entering into a transaction or agreement on behalf of a corporation in relation to securities merely because he is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4) does not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the corporation or in the course of acting as an agent of the corporation.

### **Unsolicited transactions by a holder of a capital markets services licence and representatives**

**219.** A holder of a capital markets services licence to deal in securities or trade in futures contracts, or a representative of such a holder does not contravene section 207(2) or 208(2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, securities that are traded on the stock market or futures market if —

- (a) the licensed person entered into the transaction or agreement concerned on behalf of another person (referred to in this section as the *principal*) under a specific instruction by the principal to enter into that transaction or agreement which was not solicited by the licensed person; and
- (b) the licensed person has not given any advice to the principal in relation to the transaction or agreement or otherwise sought to procure the principal's instructions to enter into the transaction or agreement; and

(c) the principal is not an associate of the licensed person, but nothing in this section affects the application of section 207(2) or 208(2) in relation to the principal.

### **Parity of information defences**

**220.**—(1) In an action against a person for a contravention of section 207(2) or section 208(2) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person's possession, it is a defence if the Court is satisfied that —

- (a) the information came into the first-mentioned person's possession solely as a result of the information having been made known as referred to in sub-paragraph 204(b)(i); or
- (b) the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

(2) In an action against a person for a contravention of section 207(3) or 208(3) because the person communicated information, or caused information to be communicated, to another person, it is a defence if the Court is satisfied that —

- (a) the information came into the first-mentioned person's possession solely as a result of the information having been made known as referred in section 204(b)(i); or
- (b) the other person knew, or ought reasonably to have known, of the information before the information was communicated.

### *Division 4 – Civil Liability*

#### **Civil penalty**

**221.**—(1) Whenever it appears to the Authority that any person has contravened any provision in this Part, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which resulted in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum —

- (a) not exceeding 3 times —
  - (i) the amount of the profit that the person gained; or
  - (ii) the amount of the loss that he avoided, as a result of the contravention; or
- (b) equal to \$50,000 if the person is not a corporation, or \$100,000 if the person is a corporation,

whichever is the greater.

(3) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which did not result in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(4) A civil penalty imposed under this section shall be payable to the Authority.

(5) If the person fails to pay the civil penalty imposed on him within the time specified in the court order, the Authority may sue for and recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

**Action under section 221 not to commence, etc., in certain situations**

**222.**—(1) An action under section 221 shall not be commenced after the expiration of 6 years from the date of the contravention of any of the provisions in this Part.

(2) An action under section 221 shall not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of any of the provisions in this Part, except where he has been acquitted on the ground of the withdrawal of the charge against him.

(3) An action under section 221 shall be stayed after criminal proceedings have been commenced against the person for the contravention of any of the provisions in this Part, and may thereafter be continued only if —

- (a) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or
- (b) the charge against him in respect of that contravention has been withdrawn.



### **Civil liability**

**223.**—(1) A person who has acted in contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss (referred to in this section and sections 224 and 225 as the contravening person) shall, whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to any person (referred to in this section and sections 224 and 225 as the claimant) who —

- (a) contemporaneously with the contravention, had subscribed for purchased or sold securities, or entered into futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and
- (b) had suffered loss by reason of the difference between —
  - (i) the price at which the securities, futures contracts, or contracts in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention; and
  - (ii) the price at which the securities, futures contracts or contracts in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention had not occurred.

(2) The amount of compensation that the contravening person is liable to pay to the claimant is the amount of the loss suffered by the claimant, up to the maximum recoverable amount.

(3) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing or trading in which the loss occurred.

(4) In determining whether a dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place contemporaneously with the contravention under subsection (1), the court shall take into account the following matters:

- (a) the volume of securities, futures contracts, or contracts in connection with leveraged foreign exchange trading of the same description dealt in or traded between the date and time of the contravention and the date and time of the dealing in securities, trading in futures contracts, or leveraged foreign exchange trading;

- (b) the date and time the contravention, if it was effected by a transaction or transactions involving the subscription for securities, sale or purchase of securities, trading in futures contracts or leveraged foreign exchange trading, was cleared and settled;
- (c) whether the dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place before or after the contravention;
- (d) (in the case of a contravention under section 189 or 207 or 208) whether the dealing in securities took place before or after the information to which the contravention relates became generally known;
- (e) such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

(5) For the purposes of this section, “maximum recoverable amount”, in respect of each contravention by a contravening person, means —

- (a) the amount of the profit that the contravening person gained; or
- (b) the amount of the loss that he avoided,

as a result of the contravention, after deducting all amounts of compensation that the contravening person had previously been ordered by a court to pay to other claimants under this section because of the same contravention.

**Action under section 213 not to commence, etc., in certain situations**

**224.**—(1) Except with the leave of court, no action under section 223 may be brought against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss after the commencement of —

- (a) criminal proceedings under this Part against the contravening person for the same contravention; or
- (b) an action under section 211 against the contravening person for the same contravention.

(2) Any action under section 213 against the contravening person in respect of a contravention of any of the provisions in this Part

which resulted in his gaining a profit or avoiding a loss, being an action that is pending on the date of commencement of —

- (a) criminal proceedings under this Part against the contravening person for the same contravention; or
- (b) an action under section 221 against the contravening person for the same contravention,

shall be stayed, and may not thereafter be continued except with the leave of court.

(3) Leave under subsection (1) or (2) may not be granted if a date has been fixed by a court under section 225(1) for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed, as the case may be, shall comply with such directions relating to the filing and proof of his claim under section 215 as that court may issue in his case.

#### **Civil liability in event of conviction, etc.**

**225.**—(1) Notwithstanding section 223, where the contravening person —

- (a) has been convicted of an offence under this Part; or
- (b) has an order for the payment of a civil penalty made against him under section 221,

in respect of the contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss, the court which convicted him or made the order against him (referred to in this section as the relevant court) may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims for compensation in respect of that contravention.

(2) For the purposes of subsection (1), the relevant court shall not fix a date that is earlier than 3 months from the date the conviction or the order imposing the civil penalty, as the case may be, has been made final.

(3) The relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay to each claimant who has filed and proven his claim for compensation an amount —

- (a) equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 223 against the contravening person himself; or

- (b) equal to the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,

whichever is the lesser.

(4) For the purposes of this section, a conviction is made final if —

- (a) the conviction is upheld on appeal, revision or otherwise;
- (b) the conviction is not subject to further appeal;
- (c) no notice of appeal against the conviction is lodged within the time prescribed by section 247 of the Criminal Procedure Code (Cap. 68); or
- (d) any appeal against the conviction is withdrawn.

(5) For the purposes of this section, an order imposing a civil penalty is made final if —

- (a) the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;
- (b) the order is not subject to further appeal;
- (c) no notice of appeal against the imposition of the penalty is lodged within the time prescribed by Rules of Court (R 5, Cap.321) made under section 227; or
- (d) any appeal against the imposition of the penalty is withdrawn.

(6) For the purposes of this section, “maximum recoverable amount” has the same meaning given to that expression in section 223(5).

### **Jurisdiction of District Court**

**226.** A District Court shall have jurisdiction to hear and determine any action under section 221, 223 or 225 regardless of the monetary amount.

### **Rules of Court**

**227.**—(1) Rules of Court may be made —

- (a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under sections 221, 223 and 225; and

(b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

(2) Without prejudice to the generality of subsection (1), Rules of Court (R 5, Cap.321) may, in relation to proceedings under section 225 —

- (a) provide for the advertisement of a notice for the filing and proof of claims under that section;
- (b) prescribe the procedure for the filing, proof and hearing of those claims; and
- (c) provide for the payment of the costs and fees of an action that has been stayed under section 224(2).

## PART XIII

## OFFERS OF INVESTMENTS

**Interpretation of this Part**

**228.**—(1) In this Part:

“debenture” includes debenture stock, bonds, notes and any other securities of a corporation whether constituting a charge on the assets of the corporation or not but does not include —

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

(b) subject to the regulations, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months;

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;

“profile statement” means a profile statement referred to in section 234;

“prospectus” means any prospectus (including an abridged prospectus registered pursuant to section 236), notice, circular, advertisement or invitation 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 units of debentures of a corporation or proposed corporation;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 231(1), as the case may be;

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 231(1), as the case may be;

“unit” in relation to a share, debenture or other interest, means any right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever name called and

includes any option to acquire any such right or interest in the share, debenture or other interest;

(2) Any reference in this Act to offering shares or debentures, or units of shares or debentures, to the public or to issuing an invitation to the public in respect of shares or debentures, or units of shares or debentures, shall, unless the contrary intention appears, include a reference to offering shares or debentures, or units of shares or debentures, to any section of the public or to issuing an invitation to any section of the public, as the case may be, whether selected as customers of the person making the offer or issuing the invitation or in any other manner, but does not include the following:

- (a) an offer or invitation to enter into an underwriting agreement, whether or not relating to shares or debentures, or units of shares or debentures, that have been previously issued;
- (b) an offer or invitation made to existing members or debenture holders of a corporation which —
  - (i) relates to shares in or debentures of that corporation, or to units of such shares or debentures; and
  - (ii) is not an offer or invitation to which section 236 applies; and
- (c) an offer made to existing members of a company under section 306 of the Companies Act (Cap.50) which relates to shares, or units of shares, in the company.

## DIVISION 1

### OFFERS FOR SUBSCRIPTION OR PURCHASE OF SHARES AND DEBENTURES

#### **Requirement for the prospectus to be lodged with and registered by Authority**

**229.**—(1) No person shall make an offer or invitation to the public in respect of shares in or debentures of, or units of shares in or debentures of, a corporation unless —

- (a) a prospectus —
  - (i) in respect of such shares or debentures, or units of such shares or debentures is prepared in accordance with section 233;

- (ii) is lodged together with a written application for the registration of the prospectus; and
    - (iii) is registered by the Authority;
  - (b) such offer or invitation is made in or accompanied by a profile statement, registered under section 234, if not made in or accompanied by a prospectus referred to in paragraph (a).
- (2) No person shall make any offer or invitation to the public in respect of shares in or debentures of, or units of shares in or debentures of, a corporation which has not been formed or does not exist.
- (3) Subsection (1) shall not apply to an offer made or invitation issued to the public in respect of shares or debentures, or units of shares or debentures, that is exempted under Division 2 of this Part.
- (4) 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.
- (5) Except where the Authority refuses registration of the prospectus under subsection (8), the Authority may register the prospectus on the fourteenth day from the date of lodgement thereof, unless the Authority gives notice of an extension, in which case, the prospectus shall be registered not later than 28 days from the date of lodgement.
- (6) If any amendment to the prospectus is lodged prior to the registration of such prospectus, the prospectus shall be deemed to have been lodged when such amendment was lodged; except that an amendment lodged with the consent of the Authority, prior to the registration of the prospectus, or lodged pursuant to an order by the Authority, shall be treated as part of the original prospectus.
- (7) The Authority may publish the prospectus for public information after it has been lodged with the Authority. For the purposes of this subsection, the person who lodges the prospectus shall provide the Authority with a copy of the prospectus in such form or medium for publication as the Authority may require.
- (8) The Authority shall refuse to register a copy of any prospectus if —
- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement or matter, or that there is



an omission from the prospectus of information required by section 233;

- (b) the copy signed by every director and by every person who is named therein as a proposed director of the corporation or by his agent authorised in writing, is not lodged with the Authority on or before the date of its issue;
- (c) the prospectus does not appear to comply with the requirements of this Act;
- (d) there are not also lodged with the Authority copies verified as prescribed of any consent required by section 243 to the issue of the prospectus; or
- (e) it appears to the Authority that it is not in the public interest to do so.

(9) The Authority shall not refuse to register a copy of the prospectus under subsection (8) without giving the person or company who or which filed the prospectus an opportunity of being heard.

(10) Any person who is aggrieved by the refusal of the Authority to register a copy of the prospectus may within 28 days of its refusal appeal to the Minister whose decision shall be final and shall be given effect to by the Authority.

(11) No suit or other legal proceeding shall lie against the Authority or any officer or employee of the Authority for any act done in good faith in the performance or intended performance of his duty or in the exercise or the intended exercise of any power under this section or any other section under this Act or regulations made thereunder or for any neglect or default in the performance or exercise in good faith of such duty or power.

(12) If a prospectus is issued without a copy thereof having been so registered, the corporation and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(13) Every corporation shall cause a true copy of every document referred to in subsection (8) (d) to be deposited within 7 days after registration of the prospectus at the registered office of the corporation in Singapore and, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose and shall keep each such copy, for a period of at least 6 months after the registration of the prospectus, for the

inspection of the members and creditors of the corporation without fee.

### **Stop order for a registered prospectus**

**230.**—(1) If the prospectus that had been registered:

- (a) contained any statement or matter which, in the Authority's opinion, is false or misleading or that there was an omission from the prospectus of information required by section 233; or
- (b) did not appear to comply with the requirements of this Act,

the Authority shall by order in writing served on the person by whom the prospectus was registered, direct that no further issues of shares in or debentures of, or units of shares in or debentures of, a corporation to which the prospectus relates be allotted or issued.

(2) Where there had been applications made under the prospectus prior to the stop order, the corporation shall either —

- (a) treat such applications as having been withdrawn and as soon as practicable afterwards, but not later than 7 days from the date of the stop order, pay to the applicants —
  - (i) any money the applicants have paid to the corporation on account of the securities; and
  - (ii) any interest that has accrued in respect of that money; or
- (b) if the securities had been issued to the applicants, the applicants shall be given at least 7 days to return the securities to the corporation and be paid in accordance with paragraph (a).

(3) Any person who contravenes or fails to comply with any of the provisions of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months.

### **Lodging supplementary document or replacement document**

**231.**—(1) If the person making an offer or invitation to the public in respect of shares in or debentures of, or units of shares in or debentures of, a corporation becomes aware of —

- (a) a false or misleading statement in the prospectus or profile statement;

- (b) an omission, from the prospectus or profile statement, of information required by section 233 or section 234, as the case may be; or
  - (c) a new circumstance that —
    - (i) has arisen since the prospectus or profile statement was registered by the Authority; and
    - (ii) would have been required by section 233 or the regulation pertaining to contents of prospectuses to be included in the prospectus, or by section 234 to be included in the profile statement, if it had arisen before the prospectus or the profile statement, as the case may be, was registered, that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.
- (2) At the beginning of a supplementary document, there shall be —
- (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
  - (b) an identification of the prospectus or profile statement it supplements;
  - (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer or invitation; and
  - (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document.
- (3) At the beginning of a replacement document, there shall be —
- (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
  - (b) an identification of the prospectus or profile statement it replaces.
- (4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(5) The person who lodges a supplementary document or the corporation concerned shall take reasonable steps to inform investors of such lodgment and make available the supplementary document free of charge to them, whereupon, for the purposes of the application of this Part to events that occur after the lodgment of the supplementary document —

- (a) where the supplementary document is a supplementary prospectus, the prospectus shall be taken to be the prospectus together with the supplementary prospectus; and
- (b) where the supplementary document is a supplementary profile statement, the profile statement shall be taken to be the profile statement together with the supplementary profile statement.

(6) The person who lodges a replacement document or the corporation concerned shall take reasonable steps to inform investors of such lodgment and make available the replacement document free of charge to them, whereupon, for the purposes of the application of this Part to events that occur after the lodgment of the replacement document —

- (a) where the replacement document is a replacement prospectus, the prospectus shall be taken to be the prospectus together with the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement shall be taken to be the profile statement together with the replacement profile statement.

(7) If the supplementary document or replacement document is lodged with the Authority, the offer shall be kept open for at least 7 days after the lodgement of the supplementary document or replacement document.

(8) Where there had been applications made under the original prospectus for shares in or debentures of, or units of shares in or debentures of, a corporation, the person shall either:

- (a) if securities had not been issued to the applicants:
  - (i) treat such applications as having been withdrawn and as soon as practicable afterwards, but not later than 7 days from the date of lodgement of the supplementary document or replacement document, pay to the applicants —

- (A) any money the applicants have paid to the corporation on account of the securities; and
- (B) any interest that has accrued in respect of that money; or
- (ii) give the applicants the documents required by subsection (2) or (3), as the case may be, and at least 7 days thereafter to withdraw their applications and be paid in accordance with subsection (8)(a)(i); or
- (b) if the securities had been issued to the applicants, give the applicants the documents required by subsection (2) or (3), as the case may be, and at least 7 days thereafter to return the securities to the corporation and be paid in accordance with subsection (8)(a)(i).

(9) Any person who contravenes or fails to comply with any of the provisions of subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months.

**As to invitation to the public to lend money to or to deposit money with a corporation**

**232.**—(1) An invitation to the public to deposit money with or lend money to a corporation shall not be issued, circulated or distributed by the corporation or by any other person unless —

- (a) a prospectus in relation to the invitation has been registered by the Authority;
- (b) the prospectus contains an undertaking by the corporation that it will, within 2 months after the acceptance of any money as a deposit or loan from any person in response to the invitation, issue to that person a document which acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and
- (c) the document is described or referred to in the prospectus and in any other document whether constituting or relating to the invitation in any of the following forms of debt obligation, in accordance with this section:
  - (i) unsecured loan stock, unsecured note, unsecured deposit note, unsecured debenture or certificate of unsecured debenture stock, bonds (including bearer and Eurobonds) short or medium term notes (including Euronotes) or convertible loan stock;

- (ii) mortgage bonds, mortgage debenture or certificate of mortgage debenture stock;
- (iii) a secured debenture or certificate of debenture stock;  
or
- (iv) *such other form as the Authority may approve as having effect for the purposes of this section but subject to such conditions as it may impose, in accordance with this section.*

(2) Where pursuant to an invitation referred to in subsection (1) a corporation has accepted from any person any money as a deposit or loan the corporation shall within 2 months after the acceptance of the money issue to that person a document which —

- (a) acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and
- (b) complies with the other requirements of this section.

(3) The document shall be described or referred to in the prospectus and in any other document whether constituting or relating to the invitation and in the document itself in the form described in subsection (1)(c)(i) or approved under subsection (1)(c)(iv) unless pursuant to subsection (4) or (5) it is and may be otherwise described.

(4) The document may be described or referred to in the prospectus or in such other document or in the document itself in the form described in subsection (1)(c)(ii) if, and only if, there is included in the prospectus the statements and the valuation as prescribed by the Authority.

(5) The document may be described or referred to in the prospectus or in such other document or in the document itself in the form described in subsection (1) (c) (iii) if, and only if—

- (a) pursuant to subsection (4) it may be (but is not) described or referred to in that prospectus or document as in the form described in subsection (1) (c) (ii); or
- (b) there is included in the prospectus the statement and the summary as prescribed by the Authority.

(6) Nothing in this section shall apply to a prescribed corporation and nothing in this Act shall require a prospectus to be issued in connection with any invitation to the public to deposit money with or lend money to a prescribed corporation.

(7) In subsection (6), “prescribed corporation” means —

- (a) a bank as defined in section 2 of the Banking Act (Cap.19); or
  - (b) a corporation or a corporation of a class which has been declared by the Minister by notification in the *Gazette* to be a prescribed corporation for the purposes of this section.
- (8) The Minister may, by notification in the *Gazette* —
- (a) specify terms and conditions subject to which subsection (6) shall have effect in relation to a corporation specified in subsection (7)(b); or
  - (b) vary or revoke any declaration or specification made under this section.
- (9) Every corporation or other person that contravenes or fails to comply with any of the provisions of this section and every officer of a corporation who is in default 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.

(10) For the purposes of this section, a certificate issued by a borrowing corporation certifying, in respect of any deposit with or a loan to the corporation, that the registered holder (or in the case of a bearer instrument, the bearer) of a specified number or value of the debt obligations described or approved under subsection (1)(c), issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

### **Contents of prospectus**

**233.**—(1) A prospectus for an offer or invitation to the public in respect of shares in or debentures of, or units of shares in or debentures of, a corporation shall contain —

- (a) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and
  - (b) the matters as prescribed by the Authority.
- (2) The prospectus shall, with respect to subsection (1)(a), contain such information —
- (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and

- (b) only to the extent that a person whose knowledge is relevant, as referred to in subsection (5) —
    - (i) actually knows the information; or
    - (ii) in the circumstances ought reasonably to have obtained the information by making enquiries.
- (3) The matters referred to in subsection (1)(a) shall relate to —
  - (a) the rights and liabilities attaching to the shares or debentures, or units of the shares or debentures, offered;
  - (b) the assets and liabilities, profits and losses, financial position and performance, and prospects of the corporation that is to issue or has issued the shares or debentures, or units of the shares or debentures;
  - (c) in the case of options over shares or debentures, the capacity of the person making the offer or invitation to issue or deliver the relevant shares or debentures; and
  - (d) if the person making the offer or invitation is one who controls the corporation whose shares or debentures underlie the offer or invitation, the assets and liabilities, profits and losses, financial position and performance, and prospects of the corporation.
- (4) In deciding what information shall be included under subsection (1)(a), regard shall be had to —
  - (a) the nature of the shares or debentures, or units of the shares or debentures, and the nature of the corporation concerned;
  - (b) the matters that likely investors may reasonably be expected to know; and
  - (c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.
- (5) For the purposes of subsection (2), a person's knowledge is relevant only if he is one of the following persons:
  - (a) the person offering the shares or debentures, or units of the shares or debentures;
  - (b) if the person offering the shares or debentures, or units of the shares or debentures, is a corporation, a director of the corporation;



- (c) a proposed director of the corporation whose shares or debentures, or units of shares or debentures, will be issued under the offer;
- (d) a person named in the prospectus as an underwriter of the issue or sale;
- (e) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;
- (f) a person named in the prospectus with his consent as having made a statement —
  - (i) that is included in the prospectus; or
  - (ii) on which a statement made in the prospectus is based;
- (g) a person named in the prospectus with his consent as having performed a particular professional or advisory function.

(6) A condition requiring or binding an applicant for shares in or debentures of, or units of shares in or debentures of, a corporation to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(7) This section does not affect any liability that a person has under any other law.

### **Profile statement**

**234.**—(1) Subject to this section, nothing in this Act shall be construed as preventing any person from issuing, circulating or distributing an extract from, or an abridged version of, the prospectus (referred to in this section as the profile statement) if —

- (a) a copy of the profile statement and the prospectus have been registered by the Authority; and
- (b) sufficient copies of the prospectus are made available free of charge for collection at the times and places specified in the profile statement.

(2) The directors of the corporation concerned shall ensure that the profile statement shall contain at least —

- (a) the following particulars:

- (i) identification of the corporation and the nature of the shares or debentures, or units of the shares or debentures, offered;
    - (ii) the nature of the risks involved in investing in the shares or debentures, or units of the shares or debentures; and
    - (iii) details of all amounts payable in respect of the shares or debentures, or units of the shares or debentures (including any amount by way of fee, commission or charge);
  - (b) a statement that copies of the prospectus are available free of charge for collection at the times and places as specified in the profile statement; and
  - (c) a statement that the directors are satisfied that the profile statement contains a fair summary of the key information set out in the prospectus.
- (3) A profile statement shall not contain —
- (a) any statement or matter that is false or misleading in the form and context in which it is included;
  - (b) any material information that is not contained in the prospectus; and
  - (c) any material information that differs in any material particular from that set out in the prospectus.
- (4) The Authority may refuse to register a copy of any profile statement if —
- (a) it is not in compliance with subsection (2) or (3);
  - (b) the copy, signed by every director and by every person who is named therein as a proposed director of the corporation or by his agent authorised in writing, is not lodged with the Authority on or before the date of its issue;
  - (c) the prospectus has not been registered or is not to be registered at the same time; or
  - (d) it appears to him that it is not in the public interest to do so.
- (5) Sections 229(9), (10) and (11) and 242 shall apply in relation to a profile statement as they apply in relation to a prospectus.

(6) If a profile statement is issued, circulated or distributed without a copy thereof having been registered by the Authority, the corporation and every person who is knowingly a party to the issue, circulation or distribution of the profile statement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

**Exemption from requirements as to form or content of prospectus or profile statement**

**235.**—(1) A person may apply to the Authority in writing for an order of exemption from any requirement of this Act relating to the form or content of a prospectus or a profile statement, and the Authority may make such an order either unconditionally or on such conditions as it may think fit to impose.

(2) The Authority shall not make an order under subsection (1) unless it is of the opinion that compliance with the requirements in respect of which exemption has been applied for would be unduly burdensome.

(3) The Authority may, by order published in the *Gazette*, exempt any class or description of prospectuses or profile statements from such requirement of this Act relating to the form or content of a prospectus or a profile statement, as the case may be, as may be specified in the order.

(4) An exemption referred to in subsection (3) may be subject to such conditions as may be specified in the order.

(5) Any person who contravenes any of the conditions specified in the order made under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(6) A prospectus or a profile statement shall be deemed to be in compliance with all the requirements of this Act relating to the form and content of a prospectus or a profile statement, as the case may be, if it is issued in compliance with an order made under subsection (1) or (3).

**Abridged prospectus for renounceable rights issues**

**236.**—(1) Any offer or invitation with respect to shares or debentures of a company shall be deemed to be an offer to the public if it is an offer or invitation by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that company and an application has been

or will be made for permission to deal with or quote such shares or debentures on any securities exchange.

(2) Where subsection (1) applies to any offer or invitation with respect to shares or debentures of a company, an abridged prospectus shall be registered containing the particulars as prescribed by the Authority.

(3) Any abridged prospectus registered pursuant to subsection (2) shall be deemed to be a prospectus for the purposes of this Act and all written law and rules of law as to contents of prospectuses (to the extent that may be applicable) and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to an abridged prospectus and have effect accordingly.

(4) Nothing in this section shall be construed as preventing a full prospectus being registered containing the particulars as prescribed by the Authority in respect of an offer or invitation referred to in subsection (1).

### **Restrictions on advertisements, etc**

**237.**—(1) A person shall not —

- (a) advertise; or
- (b) publish a statement that directly or indirectly refers to, an offer, or intended offer, of shares in or debentures of, or units of shares in or debentures of, a corporation or a proposed corporation to the public for subscription or purchase that would need a prospectus or profile statement.

(2) If an offer, or intended offer, of shares in or debentures of, or units of shares in or debentures of, a corporation or a proposed corporation to the public for subscription or purchase needs a prospectus or profile statement, a person must not —

- (a) advertise the offer or intended offer; or
- (b) publish a statement that:
  - (i) directly or indirectly refers to the offer or intended offer; or
  - (ii) is reasonably likely to induce people to subscribe or purchase the shares or debentures, or units of the shares or debentures,

unless the advertisement or publication is authorised by subsection (4), (5) or (7).

(3) In deciding whether a statement —

- (a) indirectly refers to an offer, or intended offer, of shares or debentures, or units of shares or debentures; or
- (b) is reasonably likely to induce people to apply for or purchase the shares or debentures, or units of the shares or debentures,

regard shall be had to whether the statement —

- (i) forms part of the normal advertising of a corporation's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services;
- (ii) communicates information that materially deals with the affairs of the corporation; and
- (iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(4) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been lodged with the Authority without contravening subsection (1).

(5) Before the prospectus or profile statement is lodged, an advertisement or publication does not contravene subsection (1) if it contains the following but nothing more:

- (a) a statement that identifies the offeror and the shares or debentures, or units of the shares or debentures;
- (b) a statement that a prospectus or profile statement for the offer will be made available when the shares or debentures, or units of the shares or debentures, are offered;
- (c) a statement that anyone who wants to acquire the shares or debentures, or units of the shares or debentures, will need to make an application in the manner set out in the prospectus or profile statement; and
- (d) a statement of how to arrange to receive a copy of the prospectus or profile statement.

(6) To satisfy subsection (5), 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 statement referred to in paragraph (d).

(7) After the prospectus or profile statement is lodged with the Authority, an advertisement or publication does not contravene subsection (1) if it includes a statement to the effect that —

- (a) the offers of the shares or debentures, or units of the shares or debentures, will be made in, or accompanied by, a copy of the prospectus or profile statement; and
- (b) anyone wishing to acquire the shares or debentures, or units of the shares or debentures, will need to make an application in the manner set out in the prospectus or profile statement.

(8) An advertisement or publication does not contravene subsection (1) if it —

- (a) consists of a notice or report to a securities or futures exchange by the corporation or proposed corporation, or one of its officers, about its affairs;
- (b) consists solely of a notice or report of a general meeting of the corporation or proposed corporation;
- (c) consists solely of a report about the corporation or proposed corporation that is published by the corporation or proposed corporation and —
  - (i) does not contain information that materially affects affairs of the corporation or proposed corporation other than information previously made available in a prospectus that has been lodged with the Authority, an annual report or a report referred to in paragraph (a) or (b); and
  - (ii) does not refer (whether 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 covered by paragraph (a), (b) or (c);
- (e) is a report about the shares in or debentures of, or units of the shares in or debentures of, the corporation or proposed corporation published by someone who is not —

- (i) the corporation or proposed corporation, as the case may be;
  - (ii) acting at the instigation of, or by arrangement with, the corporation or proposed corporation;
  - (iii) a director of the corporation or proposed corporation; or
  - (iv) a person who has an interest in the success of the issue or sale of the shares or debentures, or units of the shares or debentures; or
- (f) is published in the ordinary course of a business of —
- (i) publishing a newspaper, periodical or magazine; or
  - (ii) broadcasting by radio, television, or any other means of broadcasting or communication,
- and the person who published the advertisement or statement did not know and had no reason to suspect that its publication would amount to a contravention of subsection (1).

(9) Subsection (8)(d) and (e) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(10) Any person who contravenes subsection (1), and every officer of the corporation concerned, or other person, who knowingly authorised or permitted the publication or dissemination, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months.

(11) This section does not affect any liability that a person has under any other law.

(12) The Minister may, by order published in the *Gazette*, exempt any person or class of persons from this section, subject to such conditions as may be specified in the order.

### **Retention of over-subscriptions and statement of asset-backing in debenture issues**

**238.**—(1) A corporation shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus —

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

(2) Subject to the provisions as prescribed by the Authority, where a corporation specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions —

- (a) the corporation shall not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the corporation and of its guarantor corporations; and
- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

(3) Every corporation or other person that contravenes or fails to comply with any of the provisions of subsection (2) 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.

**Exemption for certain governmental and international corporations as regards the signing of a copy of prospectus by all directors**

**239.**—(1) This section shall apply only to corporations that are both of a governmental and international character.

(2) A corporation to which this section applies may apply in writing to the Authority for an exemption from the requirements of section 229(8)(b) and the Authority may, if it considers those requirements unduly burdensome on the corporation, exempt such corporation from complying therewith subject to the Authority requiring such minimum number of directors who are resident in Singapore signing the copy of the prospectus as the Authority, in any particular case, may decide and, in the event that no directors are resident in Singapore, the Authority may permit a duly authorised agent to sign the prospectus so long as such authorisation is supported by a resolution of the board of the



corporation through the Authority, if it is satisfied that a particular corporation cannot comply with any of these requirements, may grant the exemption applied for.

(3) Any prospectus that complies with the terms of exemption granted by the Authority shall be deemed to be a prospectus for the purposes of this Act and a copy of such prospectus shall be registered by the Authority.

**Document containing offer of shares for sale deemed prospectus**

**240.**—(1) Where a corporation allots or agrees to allot to any person any shares in or debentures of the corporation with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the corporation, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers therefor but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown —

- (a) that an offer of the shares or debentures or of any of them for sale to the public 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 corporation in respect of the shares or debentures had not been so received.

(3) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(4) In addition to complying with the other requirements of this Division the document making the offer shall state —

- (a) the net amount of the consideration received or to be received by the corporation in respect of shares or debentures to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the shares or debentures have been or are to be allotted may be inspected.

(5) Where an offer to which this section relates is made by a corporation or a firm, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the corporation or firm by 2 directors of the corporation or not less than half of the members of the firm, as the case may be, and any such director or member may sign by his agent authorised in writing.

**Allotment of shares and debentures where prospectus indicates application to list on securities exchange**

**241.**—(1) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures offered thereby to be listed for quotation on the official list of any securities exchange, any allotment made on an application in pursuance of the prospectus shall, subject to subsection (3), whenever made, be void if —

- (a) the permission is not applied for in the form for the time being required by the securities exchange before the third day on which the securities exchange is open after the date of issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the securities exchange.

(2) Where the permission has not been applied for, or has not been granted as aforesaid, the corporation shall, subject to subsection (3), forthwith repay without interest all money received from applicants in pursuance of the prospectus, and if any such money is not repaid within 14 days after the corporation so becomes liable to repay it then in addition to the liability of the corporation the directors of the corporation shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of such 14 days.

(3) Where in relation to any shares or debentures —

- (a) permission is not applied for as specified in subsection (1) (a); or
- (b) permission is not granted as specified in subsection (1)(b), the Minister may by notification in the *Gazette* on the application of the corporation, made before any share or debenture is purported to be allotted, exempt the allotment of the shares or debentures from the provisions of this section.

(4) A director shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this section shall have effect —

- (a) in relation to any shares or debentures 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 shares for sale as if —
  - (i) a reference to sale were substituted for a reference to allotment;
  - (ii) the persons by whom the offer is made, and not the corporation were liable under subsection (2) to repay money received from applicants, and references to the corporation's liability under that subsection were construed accordingly; and
  - (iii) for the reference in subsection (7) to the corporation and every officer of the corporation who is in default there were substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

(7) All money received as aforesaid shall be kept in a separate bank account so long as the corporation may become liable to repay it under subsection (2); and if default is made in complying with this subsection, the corporation and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months.

(8) Where the securities exchange has within the time specified in subsection (1)(b) granted permission subject to compliance with any requirements specified by the securities exchange, permission will be deemed to have been granted by the securities exchange if the directors have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange, but if any such undertaking is not complied with each director who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months.

(9) A person shall not issue a prospectus inviting persons to subscribe for shares in or debentures of a corporation if it includes —

- (a) an untrue statement that permission has been granted for those shares or debentures to be dealt in or quoted on any securities exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting the shares or debentures on any securities exchange, or to any requirements of a securities exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the securities exchange within 3 days of the issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

(10) Any person who contravenes or fails to comply with any of the provisions of subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months.

(11) Where a prospectus contains a statement to the effect that the memorandum and articles of the corporation comply or have been drawn so as to comply with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the shares or debentures offered by the prospectus to be listed for quotation on the official list of the securities exchange.

**Expert's consent to issue of prospectus containing statement by him**

**242.**—(1) A prospectus inviting subscription for or purchase of shares in or debentures of a corporation and including a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless —

- (a) he has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) there appears in the prospectus a statement that he has given and has not withdrawn his consent.

(2) If any prospectus is issued in contravention of this section the corporation 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 \$25,000 or to imprisonment for a term not exceeding 12 months.

**Prohibition of allotment unless minimum subscription received**

**242A.**—(1) No allotment shall be made of any shares of a company offered to the public unless —

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the shares so subscribed has been received by the company,

but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall be —

- (a) calculated on the nominal value of each share, and where the shares are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share; and
- (b) reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share offered to the public shall not be less than 5% of the nominal amount of the share.

(4) If the conditions referred to in subsection (1) (a) and (b) have not been satisfied on the expiration of 4 months after the first issue

of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 5 months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) An allotment made by a company to an applicant in contravention of this section or section 59 (1) shall be voidable at the option of the applicant which option may be exercised by written notice served on the company within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment, and not later, and the allotment shall be so voidable notwithstanding that the company is in course of being wound up.

(6) Every director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section or section 59 (1) shall be guilty of an offence and shall be liable in addition to the penalty or punishment for the offence to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred thereby but no proceedings for the recovery of any such compensation shall be commenced after the expiration of two years from the date of the allotment.

(7) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(8) No company shall allot, and no officer or promoter of a company or a proposed company shall authorise or permit to be allotted, shares or debentures to the public on the basis of a prospectus after the expiration of 6 months from the issue of the prospectus.

(9) If default is made in complying with subsection (8) the company and every officer or promoter of the company or proposed company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year.

(10) Where an allotment of shares or debentures is made on the basis of a prospectus after the expiration of 6 months from the issue of the prospectus, such allotment shall not, by reason only of that fact, be voidable or void.

**Application and moneys to be held by the company in trust in a separate bank account until allotment**

**242B.** --(1) All application and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public shall, until the allotment of the shares or debentures, be held by the company upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the company solely for the purpose of depositing the application and other moneys that are paid by applicants for those shares or debentures but 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.

(2) If default is made in complying with this section every officer of the company in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

**Civil liability for false or misleading statements and omissions**

**243.**—(1) Where shares or debentures, or units of shares or debentures, are offered under a prospectus or a profile statement and —

- (a) a false or misleading statement is contained in —
  - (i) the prospectus or the profile statement; or
  - (ii) any application form that is in or accompanies the prospectus or the profile statement;
- (b) there is an omission to state any information required to be disclosed under section 233 in respect of the prospectus, or under section 234 in respect of the profile statement; or
- (c) there is an omission to state a new circumstance that —
  - (i) has arisen since the prospectus or the profile statement was lodged; and

- (ii) would have been required by section 233 to be included in the prospectus, or by section 234 to be included in the profile statement, if it had arisen before the prospectus or the profile statement was lodged,

the persons referred to in subsection (3) shall be liable, in respect of the specified contravention, to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons were not involved in the making of the false or misleading statement or the omission.

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

(3) The persons liable in respect of the following specified contraventions are —

- (a) the person making the offer to the public, in respect of any contravention of subsection (1);
- (b) if the offer is made by a corporation, each director of the corporation making the offer, in respect of any contravention of subsection (1);
- (c) a person named in the prospectus or the profile statement with his consent as a proposed director of the corporation concerned, in respect of any contravention of subsection (1);
- (d) an underwriter (but not a sub-underwriter) to the issue or sale of the shares or debentures, or units of the shares or debentures, named in the prospectus or the profile statement with his consent, in respect of any contravention of subsection (1);
- (e) a person named in the prospectus or the profile statement with his consent as having made a statement —
  - (i) that is included in the prospectus or the profile statement; or
  - (ii) on which a statement made in the prospectus or the profile statement is based, in respect of the inclusion of that statement; and



(f) any other person who makes the false or misleading statement or omits to state the matter concerned, in respect of such contravention.

(4) A person who acquires shares or debentures, or units of shares or debentures, as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the shares or debentures, or units of the shares or debentures, in reliance on both the profile statement and the prospectus for the offer.

(5) An action under subsection (1) may begin at any time within 6 years after the day on which the cause of action arose.

(6) This section does not affect any liability that a person has under any other law.

**Persons liable on prospectus or profile statement to inform person making the offer about certain deficiencies**

**244.**—(1) A person referred to in section 243(3) shall notify in writing the person making an offer for shares or debentures, or units of shares or debentures, as soon as practicable, if he becomes aware during the application period that —

- (a) a material statement in the prospectus or the profile statement is false or misleading;
- (b) there is a material omission from the prospectus of material required by section 233, or from the profile statement of material required by section 234; or
- (c) a material new circumstance —
  - (i) has arisen since the prospectus or the profile statement was lodged; and
  - (ii) would have been required by section 233 to be included in the prospectus, or by section 234 to be included in the profile statement, as the case may be, if it had arisen before the prospectus or the profile statement was lodged.

(2) A person referred to in section 13.1.15(3) who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

## Defences

**245.**—(1) A person is not liable under section 243(1) only because of a false or misleading statement in a prospectus or a profile statement if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) A person is not liable under section 243(1) only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that there was no omission from the prospectus or profile statement in relation to that matter.

(3) A person is not liable under section 243(1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that he placed reasonable reliance on information given to him by —

- (a) if the person is a corporation, someone other than a director, employee or agent of the corporation; or
- (b) if the person is an individual, someone other than an employee or agent of the individual.

(4) For the purposes of subsection (3), a person is not the agent of a corporation or individual merely because he performs a particular professional or advisory function for the corporation or individual.

(5) A person who is named in a prospectus or a profile statement as —

- (a) being a proposed director or underwriter;
- (b) making a statement included in the prospectus or the profile statement; or
- (c) making a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 243(1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that he publicly withdrew his

consent to being named in the prospectus or the profile statement in that way.

(6) A person is not liable under section 243(1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged if the person proves that he was not aware of the matter.

### **Criminal liability for false or misleading statements in prospectus**

**246.**—(1) Where shares or debentures, or units of shares or debentures, are offered under a prospectus or a profile statement and —

- (a) a false or misleading statement is contained in —
  - (i) the prospectus or the profile statement; or
  - (ii) any application form that is in or accompanies the prospectus or profile statement;
- (b) there is an omission to state any information required to be disclosed under section 233 in respect of the prospectus, or under section 234 in respect of the profile statement; or
- (c) there is an omission to state a new circumstance that —
  - (i) has arisen since the prospectus or the profile statement was lodged; and
  - (ii) would have been required by section 233 to be included in the prospectus, or by section 234 to be included in the profile statement, if it had arisen before the prospectus or the profile statement was lodged,

the persons referred in subsection (2) shall be guilty of an offence of the specified contravention.

(2) Subject to subsection (3), the following persons shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years in respect of the specified contravention:

- (a) the person who makes the offer or invitation to the public in respect of the shares or debentures, or units of the shares or debentures, in respect of a contravention of subsection (1);

- (b) if the offer or invitation is made by a corporation, each director of the corporation, in respect of a contravention of subsection (1);
- (c) a person named in the prospectus or the profile statement, with his consent, as a proposed director of the corporation concerned, in respect of a contravention of subsection (1);
- (d) the underwriter (but not a sub-underwriter) to the issue or sale of the shares or debentures, or units of the shares or debentures, named in the prospectus or the profile statement with his consent, in respect of a contravention of subsection (1);
- (e) a person named in the prospectus or the profile statement with his consent as having made a statement —
  - (i) that is included in the prospectus or the profile statement; or
  - (ii) on which a statement made in the prospectus or the profile statement is based,
 in respect of the inclusion of the statement in the prospectus; and
- (f) any other person who contravenes, or is involved in the contravention of, subsection (1).

(3) A person shall not be taken to have contravened subsection (1) if the false or misleading statement, or omission, or new circumstance that is omitted from disclosure, is not materially adverse from the point of view of the investor.

(4) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

(5) Where a prospectus relating to any shares or debentures, or any unit of shares or debentures, in a corporation is issued and the prospectus omits to state any matter required to be stated as prescribed by the Authority, each director of the corporation and other person responsible for the prospectus 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.

(6) The defences specified in section 245 shall, with the necessary modification, be available to any person who is liable for an offence under this section.

*Division 2*

*Exemptions from Prospectus Requirements*

**Interpretation of this Division**

**247.** In this Part —

- (a) a reference to an offer of shares or debentures to the public shall be deemed to include a reference to an offer that is made pursuant to an invitation to the public in relation to shares or debentures;
- (b) a reference to Divisions 1 and Division 5 of Part IV of the Companies Act (Cap.50) not applying to an offer of shares or debentures is a reference to those sections only in those Divisions which are related to an offer of shares or debentures to the public; and
- (c) a reference to issuer is a reference to a corporation which issues or proposes to issue shares or debentures.

**Offer made by or to certain persons or under certain circumstances**

**248.**—(1) Division 1 of this Part and Division 5 of Part IV of the Companies Act (Cap.50) shall not apply to an offer or invitation to the public in respect of shares or debentures, or units of shares or debentures, if it is —

- (a) made in connection with a take-over scheme which is in compliance with the provisions of this Act applicable to such schemes;
- (b) made —
  - (i) in the case of an offer or invitation in respect of shares or debentures, in relation to shares or debentures; or
  - (ii) in the case of an offer or invitation in respect of units of shares or debentures, in relation to units of shares or debentures, that have been previously issued and that are of a class that are quoted or listed for quotation on a securities exchange in Singapore approved under the section 8;
- (c) made, whether or not in relation to shares or debentures, or units of shares or debentures, that have been previously issued, by a corporation to employees of the corporation

or its related corporation, where the shares or debentures or units thereof are to be held by or for the benefit of the employees in accordance with an employee share investment offer or scheme (including a share option offer or scheme) for the time being in force, if —

- (i) the employees are not induced to purchase the shares or debentures or units thereof by an expectation of employment or continued employment; and
- (ii) no selling or promotional expenses are paid or incurred in connection with the offer or scheme, other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by —
  - (A) a person holding a capital markets services licence to deal in securities or a financial adviser licensed under the Financial Advisers Act;
  - (B) an exempt person under section 4.17 of this Act; or
  - (C) an exempt person within the meaning of section 4.17 of this Act whose carrying on of the business of advising others concerning securities is solely incidental to the conduct of his business in dealing in securities.

(2) For the avoidance of doubt, nothing in subsection (1)(c) shall be construed to make an offer by a corporation to employees of the corporation or its related corporation of any of its shares or debentures, or units of shares or debentures, an offer to the public by reason only that such offer is made to the employees of the corporation or its related corporation.

(3)(a) Division 1 of this Part and Division 5 of Part IV of the Companies Act (Cap.50) shall not apply to any person making an offer of shares or debentures to the public where, on the application of any person interested, the Minister declares, by order, that circumstances exist whereby —

- (i) the cost of providing a prospectus outweighs the resulting protection to investors; or
- (ii) otherwise, it would not be prejudicial to the public interest if a prospectus were dispensed with.

(b) In the circumstances described in subsection (3) (a), the Minister, on making the order, may impose such conditions on the offer as he considers appropriate.

(c) An order made under this subsection shall be final and shall not be challenged in any court.

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

**249.** Division 1 of this Part and Division 5 of Part IV of the Companies Act (Cap.50) shall not apply to an offer of shares or debentures, or units of shares or debentures, to the public whether or not they have been previously issued, made to —

- (a) a bank that is licensed under the Banking Act (Cap.19) or a merchant bank that is approved under section 28 of the Monetary Authority of Singapore Act (Cap.186);
- (b) an insurance company that is registered under the Insurance Act (Cap.142.) or a trust company registered under the Trust Companies Act (Cap.336);
- (c) the Government or a statutory board;
- (d) a person who is holding a capital markets services licence to deal in securities or a person exempted under section 87 or any subsidiary legislation made thereunder from obtaining a such a licence;
- (e) a person holding a capital markets services licence to provide fund management;
- (f) a pension fund or unit trust;
- (g) an investment company as defined in section 355(1) of the Companies Act (Cap.50), or any person holding a financial adviser's licence or exempted from doing so under the Financial Adviser's Act or any subsidiary legislation made thereunder; and
- (h) such other persons as the Minister may, by order published in the *Gazette*, declare to be exempt purchasers, who or which, pursuant to the offer, acquires the shares or debentures as principal or as a trustee for accounts fully managed by it who, for the purposes of this section, shall be deemed to be dealing as principal.

### **Offer to sophisticated investors**

**250.**—(1) Division 1 of this Part and Division 5 of Part IV of the Companies Act (Cap. 50) shall not apply to an offer of shares or

debentures to the public, whether or not they have been previously issued, where the offer is made to a sophisticated investor, if —

- (a) the offer of the shares or debentures is not accompanied by an advertisement offering or calling attention to the offer or intended offer; and
- (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 a person holding a capital markets services licence to deal in securities or a financial adviser.

(2) For the purposes of this section —

“advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other communication medium; or
- (c) a communication by means of a recorded telephone message, that is published in connection with an offer of shares or debentures but does not include an information memorandum or an announcement made by a company listed on the Singapore Exchange or a recognised securities exchange pursuant to any requirement of that securities exchange or an advertisement which contains only such information as is permitted by section 236(1);

“financial adviser” means —

- (a) a person who is licensed under the Financial Adviser’s Act; or
- (b) an exempt person under this Act whose carrying on the business of advising others concerning securities is solely incidental to the conduct of his business of dealing in securities;

“information memorandum” means a document lodged with the Authority as purporting to describe the business and affairs of the person making the offer and as having been prepared for delivery and review by sophisticated investors so as to assist them in making an investment decision in respect of shares or debentures that are being offered;

“sophisticated investor” means —



- (a) a person who acquires the shares or debentures, pursuant to the offer, as principal if the aggregate consideration for the acquisition is not less than \$200,000 (or its equivalent in foreign currencies) for each transaction whether such amount is paid for in cash, by exchange of shares or other assets; or
- (b) a person who acquires the shares or debentures pursuant to the offer as principal and —
  - (i) whose total net personal assets exceed S\$2 million or its equivalent in foreign currencies or whose income in the preceding 12 months is not less than S\$300,000 or its equivalent in foreign-currencies at the time of the acquisition; or
  - (ii) in the case of a corporation, whose total net assets exceed S\$10 million in value or its equivalent in foreign currencies as determined by the last audited balance-sheet of the corporation; or
- (c) an officer of the person making the offer or a spouse, parent, brother, sister, son or daughter of that officer or of the person making the offer, if he is a natural person.

(3) An exempt person who so acquires shares or debentures under section 249 or this section shall not be regarded as contravening any provision in the this Act.

(4) The Minister may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in paragraph (a) or (b) in the definition of “sophisticated investor” in subsection (2).

**Circumstances in which a prospectus is not required on first sale of shares or debentures acquired pursuant to exemptions in section 249 or 250**

**251.**—(1) Where shares or debentures, or units of shares or debentures, initially acquired pursuant to an exemption in section 249 or 250, are first sold to any of the persons specified in the sections —

- (a) the offer for sale to any of those persons shall not be regarded as an offer to the public for which a prospectus is required; and

(b) any subsequent offer for sale to any of those persons shall not be regarded as an offer to the public for which a prospectus is required.

(2) Where shares or debentures, or units of shares or debentures, initially acquired pursuant to an exemption in section 249 or 250, are first sold to any person other than those specified in the sections, the offer for sale shall be regarded as an offer to the public for which a prospectus is required, unless —

(a) the shares or debentures, or units of the shares or debentures, to which the offer relates are listed or quoted on a securities exchange in Singapore or a recognised securities exchange, and at least 6 months have elapsed from the date that they were initially acquired pursuant to the exemption under section 249 or 250; or

(b) where the shares or debentures, or units of the shares or debentures, to which the offer relates are not listed or quoted on a securities exchange in Singapore or a recognised securities exchange, the following conditions are satisfied:

(i) the seller gives a notice in writing to the purchaser at the time of the sale that —

(A) he is buying the shares or debentures, or units of the shares or debentures, pursuant to an exemption under section 249 or 250; and

(B) the shares or debentures, or units of the shares or debentures, would not be sold, transferred or assigned to any person, other than to any of the persons specified in section 249 or 250, for at least 6 months from the date that the shares or debentures, or units of the shares or debentures, are initially acquired pursuant to the exemption under section 249 or 250; and

(ii) the offer of the shares or debentures, or units of the shares or debentures, is not accompanied by an advertisement offering or calling attention to the offer and no selling or promotional expenses are paid or incurred in connection with the offer except for administrative or professional services or services performed by a person holding a capital services market licence to deal in securities or a financial adviser.

(3) A contract of sale of shares or debentures made or entered into in contravention of the condition in subsection (2)(b) shall be void.

(4) The Court, on being satisfied that a contract of sale is void under subsection (3), may, on the application of the Authority or any other person, make such order or orders as it thinks just and equitable including, without limiting the generality of the foregoing, the following orders:

- (a) an order directing the seller to refund the purchase moneys to the purchaser and directing the purchaser to return the shares or debentures to the seller;
- (b) an order directing the seller to indemnify the purchaser for any loss or damage that he may have suffered as a result of the contract being void.

(5) In a case to which subsection (2)(a) applies, any subsequent offer for sale of the listed shares or debentures, after the expiration of the 6-month period, shall not require a prospectus.

(6) In subsection (2), “advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other communication medium; or
- (c) a communication by means of a recorded telephone message that is published in connection with an offer of shares or debentures; and “recognised securities exchange” has the same meaning as is assigned to that expression in section 253.

### **Securities exchange offer.**

**252.**—(1) Division 1 of this Part and Division 5 of Part IV of the Companies Act (Cap.50) shall not apply to an offer of shares or debentures to the public, that have not been previously issued, in a case where the shares or debentures to be offered are, or are to be, uniform in all respects with shares or debentures previously issued and listed for quotation on a securities exchange if a statement of material facts, which complies with such form and content as prescribed by the Authority, is lodged with, and accepted by, the Authority and the securities exchange.

(2) For the purposes of this section —

- (a) shares are uniform in all respects with shares previously issued notwithstanding that they do not carry the same

rights to dividends as the latter during the 12 months immediately following the issue; and

- (b) a statement of material facts referred to in subsection (1) shall be deemed to be a prospectus for the purposes of sections 242 and 245.

### **Offer of international debentures**

**253.**—(1) Division 1 of this Part and Division 5 of Part IV of the Companies Act (Cap.50) shall not apply to an offer to the public of debentures by a body incorporated in a country outside Singapore where the offer is made by a recognised person holding a capital markets services licence to deal in securities or is an exempted person by virtue of section 87(1)(a) or (b), to such institutional, professional or business investors as the Minister may, by notification in the *Gazette*, specify, being persons or bodies that appear to him sufficiently expert to understand any risk involved in buying or selling those debentures (whether as principal or agent) and the offer complies with the conditions set forth in subsection (2).

(2) The conditions referred to in subsection (1) are that —

- (a) the debentures are denominated in a currency, other than the Singapore dollar, that is equivalent in value to at least US\$5,000; and
- (b) the shares of the issuing corporation are listed on a recognised securities exchange or the offer is guaranteed by a corporation whose shares are listed on a recognised securities exchange.

(3) For the purposes of this section, “recognised securities exchange” means a corporation declared by the Minister, by notification in the *Gazette*, to be a recognised securities exchange.

(4) The Minister may by notification in the *Gazette* add to, vary or amend the conditions specified in subsection (2).

### **Offer of debentures made by the Government or international financial institutions**

**254.** Division 1 of this Part and Division 5 of Part IV of the Companies Act (Cap.50) shall not apply to an offer to the public of debentures made by or guaranteed by —

- (a) the Government; or
- (b) an international financial institution of which Singapore is a member.

### **Reporting requirements.**

**255.**—(1) Where an issuer intends to invoke an exemption under this Division other than an exemption under sections 248(1), 251 and 252, he shall lodge with the Authority a report of his intention to issue the shares or debentures, in such form as may be prescribed at or before the time of invoking the exemption.

(2) The issuer, if incorporated in Singapore, shall maintain a register in the prescribed form of the shares or debentures issued under subsection (1).

(3) Particulars of the issue of the shares or debentures shall be entered in the register within 3 days of the sale.

(4) Upon the request of the Authority, the issuer shall produce for inspection the register maintained under subsection (2) and the Authority may make extracts from the register.

(5) The Authority may supply a copy of an extract from a register to any person who, in its opinion, should, in the public interest, be informed of the issue of the shares or debentures disclosed in the register.

### **Revocation of exemption**

**256.**—(1) Where the Minister considers that it is necessary in the public interest or for the protection of investors, he may, by order, revoke any exemption under this Division, subject to such conditions as he thinks fit.

(2) The Minister may make an order, under subsection (1), without giving the person affected by the order an opportunity of being heard but he shall provide an opportunity for such a hearing within 14 days of the making of the order and the order shall remain in effect until the hearing is completed.

(3) An order made under this section shall be final and conclusive and there shall be no appeal therefrom.

### **Power to conduct investigations**

**257.** Where the Minister has reason to suspect that a person has committed an offence under this Act or the regulations or has been guilty of fraud or dishonesty in relation to any exempted offer to which this Division applies, he may direct such investigation as he thinks expedient for the due administration of this Act and for this purpose may invoke all powers conferred upon him by this Act in respect of any dealing in, or trading in, securities.

**Transactions under exempted offers subject to Division II of Part XII of the Companies Act and Part XII of this Act**

**258.** For the removal of doubts, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division II of Part XII of the Companies Act or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

*DIVISION 3 -Collective Investment Schemes*

**Interpretation of this Division**

**259.**—(1) In this Division, unless inconsistent with the context or subject-matter —

“close-end fund” means a corporation —

- (a) which is or holds itself out as being engaged primarily in the business of investing or trading in any property (including securities and futures contracts);
- (b) the shares of which are not exclusively or primarily redeemable shares; and
- (c) the shares of which are not listed on the Singapore Exchange.

“collective investment scheme” means —

- (a) in respect of a collective investment scheme constituted in Singapore, a unit trust or an investment arrangement; and
- (b) in respect of a collective investment scheme constituted outside Singapore, a unit trust, a mutual fund corporation, a close-end fund or an investment arrangement.

“franchise” means a written agreement or arrangement between 2 or more persons by which —

- (a) a party to the agreement or arrangement (referred to in this definition as the franchisor) authorises or permits another party (referred to in this definition as the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in

Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;

- (b) the business carried on by the franchisee or the person associated with the franchisee, as the case may be, is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;
- (c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee's business;
- (d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor;
- (e) the franchisor agrees to communicate to the franchisee or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential; and
- (f) the agreement or arrangement referred to in paragraph (a) is not a unit trust scheme as defined in this Act or an investment arrangement;

“investment arrangement” means —

- (a) an arrangement in respect of any property —
  - (i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;
  - (ii) under which —
    - (A) the property is managed as a whole by or on behalf of the person operating the arrangements;
    - (B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or

- (C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the profits or income from which payments are made to them are pooled; and
- (iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive —
  - (A) profits, income or other returns represented to arise or be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or
  - (B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right, interest, title or benefit in the property or any part of the property; or
- (b) an arrangement which is an arrangement, or is of a class or description of arrangements specified by the Authority, by way of a notice published in the *Gazette*, as investment arrangement,

but does not include —

- (i) an arrangement operated by a person otherwise than by way of business;
- (ii) an arrangement under which each of the participating persons carries on a business other than investment business and enters into the arrangements solely incidental to that other business;
- (iii) an arrangement under which each of the participating persons is a corporation in the same group of corporations as the person operating the arrangements;
- (iv) an arrangement under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of corporations as



the person operating the arrangement, or a spouse, widow, widower, minor child (natural or adopted) or minor step-child or such employee or former employee;

- (v) a franchise as defined in this section;
- (vi) an arrangement under which money is taken by a solicitor from his customer, or as a stakeholder, acting in his professional capacity in the ordinary course of his practice;
- (vii) an arrangement made by any co-operative society registered under the Co-operative Societies Act (Cap.62) in accordance with the object thereof for the benefit of its members;
- (viii) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act (Cap.39);
- (ix) an arrangement in or arising out of a policy of life insurance: and
- (x) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority, by way of a notice published in the *Gazette*, as not constituting investment arrangement;

“manager” means —

- (a) in relation to a collective investment scheme constituted in Singapore, —
  - (i) a financial institution licensed to provide fund management or otherwise regulated by the Authority, (but does not include any person exempted under regulations made under this Act; or
  - (ii) a public company as defined under the Companies Act (Cap.50),

which is responsible for the management or operation of the collective investment scheme; and

- (b) in relation to a collective investment scheme constituted outside Singapore, a person which is responsible for the management or operation of the collective investment scheme;

“mutual fund corporation” means a corporation —

- (a) which is or holds itself out as being engaged primarily in the business of investing or trading in any property (including securities and futures contracts); and
- (b) the shares of which are exclusively or primarily redeemable shares;

“participant” means a person who participates in a collective investment scheme by way of owning a unit in a collective investment scheme;

“units” means the rights or interests (however described) of the participants in a collective investment scheme;

“unit trust” means any unit trust scheme being any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property.

### **Authorised schemes**

**260.**—(1) The Authority may, upon an application made to it, authorise a collective investment scheme constituted in Singapore.

(2) The Authority shall only authorise a collective investment scheme constituted in Singapore if —

- (a) there is a manager for the scheme as defined in section 259;
- (b) there is a trustee approved in accordance with section 264 in respect of the scheme;
- (c) there is a trust deed in respect of the scheme that complies with the requirements in the regulations prescribed under section 295(2)(aa);
- (d) the scheme complies with such other matters and things as may be required by the regulations prescribed under 295(2)(aa); and
- (e) the scheme complies with the requirements of the Code on Collective Investment Schemes specified in section 286(2)(b). The Authority may from time to time revise the Code on Collective Investment Schemes by varying, amending or adding to the provisions thereof and any revision thereof shall be published in the *Gazette*.

(3) The Authority may refuse to authorise any collective investment schemes under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(4) An application made pursuant to subsection (1) shall be accompanied by such information and documents as the Authority may require.

(5) The Authority may publish for public information in such manner as it considers appropriate, particulars of any collective investment scheme authorised under subsection (1).

### **Recognised schemes**

**261.**—(1) The Authority may, upon an application made to it and subject to the conditions specified in subsection (2), recognise a collective investment scheme constituted outside Singapore.

(2) It shall be a condition of recognition of a scheme under subsection (1) that at any time when the scheme is recognised—

- (a) in the case of a mutual fund corporation or a close-end fund, the corporation must be registered as a foreign company under Part XI, Division 2 of the Companies Act (Cap.50);
- (b) in the case of a unit trust or investment arrangement, the manager of that scheme must be registered as a foreign company under Part XI, Division 2 of the Companies Act, unless it is a company incorporated in Singapore;
- (c) there is a representative resident in Singapore, which may be a local agent of the foreign company appointed under section 368 of the Companies Act (Cap.50) referred to in paragraph (a) or (b), appointed for the purposes of issuing and redeeming units, sending reports to unitholders, publishing sale and purchase prices of units in the scheme, maintaining a subsidiary register of unitholders in Singapore, making available for inspection the instruments constituting the scheme, being served with notices for the scheme and such other purposes and functions as the Authority may prescribe in the regulations from time to time;
- (d) the Authority is informed of particulars —
  - (i) subject to sub-paragraph (ii), of the current details in respect of the registered office of the foreign company referred to in paragraph (a) or (b) or the company incorporated in Singapore referred to in

paragraph (b), including, the name of and contact details of the representative; and

(ii) where there is a change in the details referred to in sub-paragraph (i), of the change, within 14 days after the change takes place.

(3) The Authority shall only recognise a scheme if —

(a) the laws and practices of the jurisdictions under which the scheme and its manager are constituted and supervised affords to investors in Singapore protection at least equivalent to that provided to them by or under this Division in the case of comparable authorised schemes;

(b) there is a fit and proper person acting as manager for the scheme and in considering if a person is a fit and proper person to act as manager for the purposes of subsection (3)(b), the Authority may take into account any matter relating to:

(i) any person who is or will be employed by or associated with the manager;

(ii) any director of the manager;

(iii) any person exercising influence over the manager;

(iv) any corporation in the same group as the manager;

(v) any director of such corporation; or

(vi) any person exercising influence over any such corporation.;

(c) the scheme complies with such other matters and things as are required by this Act, the regulations and the code on Collective Investment Schemes.

(4) The Authority may refuse to recognise any schemes under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(5) An application made pursuant to subsection (1) shall be accompanied by such information and documents as the Authority requires.

(6) The Authority may publish for public information in such manner as it considers appropriate, particulars of any collective investment scheme recognised under subsection (1).

### **Withdrawal of authorisation or recognition**

**262.**—(1) The Authority may withdraw —

- (a) the authorisation of a collective investment scheme made under section 260 or recognition of a collective investment scheme made under section 261, if at any time

—

(i) the Authority finds that the application for authorisation under section 260 or recognition under section 261 or related documents submitted to the Authority whether at the same time as or subsequent to the application, contained any information that is false or misleading in a material aspect or omitted a material particular which, had the Authority so known, would not have granted such authorisation or recognition; or

(ii) the continuation of the authorised scheme or recognised scheme is prejudicial to its participants or potential participants; or

- (b) the recognition of a collective investment scheme made under section 261 if the scheme fails to comply with any condition for recognition in section 261(2) or fails to comply with any requirement in section 261(3).

(2) Where the Authority withdraws the authorisation or recognition of a collective investment scheme under subsection (1)(a) before the collective investment scheme has invested a substantial part of the subscription moneys in relation to the offer in Singapore, the manager of an authorised scheme or the representative of a recognised scheme shall refund in full all moneys received from the participants of that scheme.

(3) In a case to which subsection (1) applies, the Authority may, if it considers it desirable to do so, instead of withdrawing the authorisation or recognition of a collective investment scheme, suspend the authorisation or recognition of that collective investment scheme such that no further offers in respect of that scheme may be made, and may at any time remove such suspension.

(4) Where the Authority withdraws the authorisation or recognition of a scheme under subsection (1), it shall notify the manager or the representative in writing, as the case may be, of the decision and the reason for which it is made.

(5) Subject to subsection (6), the Authority may, upon a request in writing made by the manager or the representative of a

collective investment scheme, withdraw the authorisation or recognition of that collective investment scheme.

(6) The Authority may refuse to withdraw the authorisation or recognition of a scheme under subsection (5) where it appears to the Authority that —

- (a) there is any matter concerning the scheme which should be investigated before the authorisation or recognition is withdrawn; or
- (b) the withdrawal of the authorisation or recognition would not be in the public interest.

(7) Where the Authority withdraws the authorisation or recognition under subsection (1) or (5), or suspends the authorisation or recognition under subsection (3), it may —

- (a) impose such conditions on the withdrawal or suspension as it considers appropriate; and
- (b) publish notice of the withdrawal or suspension and the reason therefor in such manner as it considers appropriate.

(8) Any notice or decision required to be issued or served to or on a representative shall for all purposes be regarded as duly issued or served to or on the representative if it has been delivered or sent by post or by facsimile or electronic mail transmission to the representative in accordance with the particulars of which the Authority is informed in respect of the representative for the purposes of section 261(2)(c).

### **Offers to the public**

**263.** No person shall make an offer or invitation to the public of units in a collective investment scheme which has not been authorised under section 13.3.2 or recognised under section 261.

### **Approval of trustees**

**264.—**(1) The Authority may, upon an application made to it, approve a public company as defined in the Companies Act to act as trustee for schemes authorised under section 260.

(2) The Authority shall not approve a public company to act as trustee under subsection (1) unless the company satisfies the financial requirements and other criteria which the Authority may prescribe by regulations from time to time.

(3) The Authority may, at any time, where it finds that an approved trustee —

- (a) has failed to satisfy a financial requirement or other criterion specified in subsection (2), subject to which the approval was granted;
- (b) has not carried out its duties diligently and with due care;  
or
- (c) acts in a manner which prejudices the participants of any authorised scheme,

revoke an approval granted under this section or may prohibit such trustee from acting as trustee for any new collective investment schemes.

### **Inspections of trustees**

**265.**—(1) The Authority may, from time to time, inspect the books, accounts, documents and transactions of an approved trustee.

(2) The Authority may appoint any person to exercise the power of the Authority under subsection (1).

(3) For the purpose of an inspection under this section, the trustee referred to in subsection (1) under inspection shall afford the Authority access to, and shall produce, its books, accounts and documents and shall give such information and facilities as may be required to conduct the inspection.

(4) Any person appointed by the Authority shall, at all times, have the power to copy or take possession of the books, accounts and other documents of a trustee.

(5) Any person who fails, without reasonable excuse, to produce any book, account or document or furnish any information or facilities in accordance with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

### **Duty of trustees to furnish Authority with such return and information as Authority requires**

**266.** An approved trustee shall furnish such returns and provide such information relating to his business as the Authority may require.

### **Statement to be issued.**

**267.**—(1) Before any person issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase units in a collective investment scheme, there must be a statement in writing in connection therewith which statement shall

for all purposes be deemed to be a prospectus issued by the manager, mutual fund corporation or corporation, and, subject to subsection (2), all provisions of this Act, other than section 242A(8), (9) and (10) and rules of law relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall with such adaptations as are necessary apply and have effect accordingly as if the units were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation in respect of or subscribing for or purchasing any units were subscribers for shares.

(2) Subject to subsection (3), the statement shall set out —

- (a) the matters and reports, if any, as prescribed by the Authority; and
- (b) such other matters as are required by the regulations to be set out in the statement, with such adaptations as the circumstances of each case require and the Authority approves.

(3) A matter or report referred to in subsection (2) may be omitted from a statement if having regard to the nature of the scheme, the Authority is of the opinion that the matter or report is not appropriate for inclusion in the statement and has in writing approved that omission.

### **Restriction on offer of collective investment schemes**

**268.**—(1) No offeror or agent of an offeror shall —

- (a) issue or offer to the public for subscription or purchase; or
- (b) invite the public to subscribe for or purchase,

units in a collective investment scheme on the basis of a statement referred to in section 267 after the expiration of 12 months from the issue of the statement.

(2) A purchase of or subscription for units in a collective investment scheme made on the basis of the statement after the expiration of 12 months shall not, by reason of that fact, be voidable or void.

### **Penalty for contravention of provisions, etc.**

**269.**—(1) Any person who —



- (a) provides to the Authority information which is false or misleading in a material particular or omits a material particular —
  - (i) in respect of an application for authorisation or recognition of a collective investment scheme under section 260(1) or 261(1); or
  - (ii) which may be required under section 265 or 266;
- (b) fails to comply with the requirement in section 260(a) to (c) in respect of authorisation of a collective investment scheme or the requirement in section 261(2)(a), (b) or (c) in the case of recognition of a collective investment scheme; or
- (c) fails to comply with any of the provisions of this Division (except for a contravention of sections 263 and 268) or the regulations prescribed pursuant to the provisions of this Division,

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 two years or to both.

(2) Any failure by a person who is concerned with the constitution, operation, management or offer of a authorised or recognised scheme to comply with any provision of the Code on Collective Investment Schemes issued pursuant to section 286(2)(b), shall not in itself be an offence but the Authority may invoke such sanctions (including reprimands or prohibition of further offers in respect of the schemes) as it may decide in relation to such breaches.

(3) Notwithstanding the penalties imposed in subsections (1) and (2) above, the Authority may in the case of any failure or non-compliance referred to in subsections (1) and (2),

- (a) prohibit any further offers of units in the collective investment scheme concerned for such period as the Authority may determine, or
- (b) refuse to authorise or recognise any future collective investment scheme for which that person concerned proposes to act as manager or representative.

(4) Any person who —

- (a) in contravention of section 263, makes an offer or invitation to the public of units in a collective investment scheme which has not been authorised or recognised ;

- (b) makes an offer or invitation to the public of units in a collective investment scheme without a statement as required under section 267; or
- (c) engages in any act, practice or course of business in the constitution or operation of a collective investment scheme which operates as a fraud or deception, or is likely to operate as a fraud or deception, of the participants or potential participants of that scheme,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years if the person is a natural person or a fine not exceeding \$500,000 where the person is a corporation.

(5) A person shall not be relieved from any liability to any participant in a collective investment scheme by reason of any contravention of, or failure to comply with, a provision of this Division.

#### **Non-application of Division in certain circumstances and power to exempt from compliance with Division**

**270.**—(1) This Division shall not apply to an offer or invitation to subscribe for or purchase units in a collective investment scheme where the offer or invitation is made to such institutions or persons and under such circumstances referred to in section 249, and 256. All provisions in section 249, 250, and [256] relating to offers of shares or debentures shall with such adaptations as are necessary apply and have effect accordingly as if the units were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation to purchase units were subscribers for shares.

(2) Where an information memorandum has been prepared in respect of an offer or invitation made to a sophisticated investor as defined in section 250, such information memorandum must state that the scheme is exempted from compliance with this Division.

#### **Power of Authority to exempt**

**271.**—(1) The Authority may exempt any person by notification in writing or class of persons by notification in the *Gazette*, subject to such terms and conditions as are specified in the notification, from complying with all or any of the provisions of this Division in relation to any collective investment scheme or class of collective investment schemes specified in the notification, and may, by notification in writing or in the *Gazette*, revoke such a notification or vary it in such manner as it thinks fit.

(2) Any person who contravenes or fails to comply with any of the conditions specified in the notification shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(3) This Division shall not apply in the case of the sale of any collective investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realisation of assets.

#### *DIVISION 4 - SECURITIES HAWKING*

#### **Securities hawking prohibited**

**272.**—(1) A person must not offer securities for issue or sale in the course of, or because of, an unsolicited —

- (a) meeting with another person; or
- (b) telephone call to another person;

unless the offer is exempted under subsection (2).

(2) Subsection (1) does not prohibit an offer of securities if:

- (a) the offer does not need a disclosure document because of section 250 or 263; or
- (b) the offer does not need a disclosure document because of section 249; or
- (c) the offer is an offer of listed securities made by telephone by a person holding a capital markets services licence to deal in securities; or
- (d) the offer is made to a customer by a person holding a capital markets services licence to deal in securities through whom the customer has bought or sold securities in the last 12 months.<sup>1</sup>

(3) The Minister may, by order published in the *Gazette*, exempt —

- (a) any person or class of persons; or
- (b) any class or description of securities,

from compliance with subsection (1), subject to such conditions as may be specified in the order.

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<sup>1</sup> Section 736 Australia's Corporation Law.

(4) Every person who acts, incites, causes or procures any person to act in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both and in the case of a second or subsequent offence to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) Where a person convicted of an offence under this section is a corporation, every officer concerned in the management of the corporation shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(6) Where any person is convicted of having made an offer in contravention of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any securities; and an appeal against the order and any consequential directions shall lie to the Court.

(7) In this section, securities includes shares of a corporation whether a corporation in existence or to be formed and includes debentures and units and (without affecting the generality of the expression debentures) all such documents (including those referred to as bonds) as confer or purport to confer on the holder thereof any claim against a corporation, whether such claim is present or future or certain or contingent or ascertained or sounding only in damages and also includes any units in a collective investment scheme to which Division 3 of this Part applies.

(8) In this section, a reference to an offer or offering of securities for subscription or purchase shall be construed as including an offer of securities by way of barter or exchange.

(9) For the purposes of subsection (1), a person shall not in relation to a corporation be regarded as not being a member of the public by reason only that he is a holder of securities in the corporation or a purchaser of goods from the corporation.

## PART XIV

### APPEALS

#### **Appeals to Minister**

**273.**—(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the Minister's decision shall be final.

(2) Except for appeals under Part II or III, where an appeal is made to the Minister under this Act, the Minister shall forthwith constitute an Appeal Advisory Committee comprising not less than 2 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee within 28 days of his receipt of the appeal.

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under this section but he shall not be bound by the recommendations in the report.

#### **Appeal Advisory Committees**

**274.**—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 273, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from the financial services industry and the public and private sectors as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for reappointment.

(3) The Appeal Advisory Committee shall have the power, in the exercise of its functions, to enquire into any matter or thing related to the securities or futures industry and, for this purpose, may summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor of a document containing a privileged

communication made by or to him in that capacity or authorise the taking of possession of any such document which is in his possession.

(5) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

- (a) shall be deemed to be a public servant within the meaning of the Penal Code (Cap.224); and
- (b) shall have, in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

(8) Subject to the provisions of this Act, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

### **Disclosure of information**

**275.** Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the public interest to disclose.

### **Regulations**

**276.** The Minister may make regulations with regard to the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees.

## PART XV

## MISCELLANEOUS

**Jurisdiction over contraventions of the Act**

**277.** Without prejudice to Part XII, this Act applies to an act or omission outside Singapore only if the act or omission is capable of having effect in Singapore.

**Offence by corporation**

**278.**—(1) If an offence under this Act committed by a corporation is shown —

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the corporation is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a corporation are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporation.

(3) Officer, in relation to a corporation, means a director, executive officer, manager, secretary or a person purporting to act in any such capacity.

(4) Members, in relation to a corporation, has the same meaning given to it in section 19(6) of the Companies Act (Cap.50).

(5) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a corporation formed or recognised under the law of a territory outside Singapore.

**Offences by directors or managers**

**279.**—(1) Any person, being a director or manager of an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider, a clearing house, or a holder of a capital markets services licence to carry on a business in any regulated activity, who —

- (a) fails to take all reasonable steps to secure compliance with the provisions of this Act ; or

(b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In any proceedings against a person under subsection (1), it shall be a defence to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, and that that person was competent, and in a position, to discharge that duty.

(3) A person shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

### **Falsification of records by directors, employees and agents**

**280.** Any director, manager, auditor, employee or agent of an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider, a clearing house, or a holder of a capital markets services licence to carry on a business in any regulated activity who —

- (a) wilfully makes, or causes to be made, a false entry in any book or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of that exchange holding company, securities exchange, futures exchange, recognised trading system provider, clearing house, or holder of a capital markets services licence;
- (b) wilfully omits to make an entry in any book or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of that exchange holding company, securities exchange, futures exchange, recognised trading system provider, clearing house, or holder of a capital markets services licence, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, abstracts, conceals or destroys an entry in any book or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of that exchange holding company, securities exchange, futures exchange, recognised trading system provider, clearing house, or holder of a capital markets



services licence, or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,

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

### **Duty not to furnish false information to Authority**

**281.**—(1) Any person who furnishes the Authority with any information under or for the purposes of any other provision of this Act shall use due care to secure that the information is not false or misleading in any material particular.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who signs any document lodged with the Authority under Part V of this Act shall use due care to secure that the document is not false or misleading in any material particular.

(4) For the purpose of any proceedings under subsection (3), a document purporting to be signed by any person shall be presumed to have been signed by him, unless the contrary is proved.

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

### **Prohibition of use of certain titles**

**282.**—(1) Except with the approval of the Authority, no person, other than a securities exchange, futures exchange or a clearing house, shall —

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

(2) A person who is not holding a capital markets services licence to deal in securities or trade in futures contracts shall not

—

- (a) take or use the title or description “stockbroker or sharebroker”<sup>2</sup>, or “futures broker”; or
- (b) take or use, or have attached to or exhibited at any place, any title or description that resembles the titles specified in paragraph (a) or so closely resembles such titles as to be calculated to deceive.

(3) Any person who contravenes this section 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 of \$2,000 for every day during which the offence continues after conviction.

**Power of Court to prohibit payment or transfer of moneys, securities etc.**

**283.**—(1) Where —

- (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute an offence under this Act;
- (b) a prosecution has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of any persons to whom the person referred to in paragraph (a) or (b) or this paragraph, as the case may be (referred to in this section as the relevant person), is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of penalties, damages or compensation or otherwise, or to account for any securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property,

the Court may, on application by the Authority, make any one or more of the following orders:

- (i) an order prohibiting either absolutely or subject to conditions a person who is indebted to the relevant person or to any person associated with the relevant person from making a payment in total or partial discharge of the debt

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<sup>2</sup> Section 1115 Australian Corporations Law

to, or to another person at the direction or request of, the person to whom the debt is owed;

- (ii) an order prohibiting, either absolutely or subject to conditions, a person holding money, or securities, futures contracts or contracts in connection with leveraged foreign exchange trading, or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying all or any of the moneys, or transferring, or otherwise parting with possession the securities, future contracts or contracts in connection with leveraged foreign exchange trading, or other property, to, or to another person at the direction or request of, the person on whose behalf the money, or the securities, futures contracts, or contracts in connection with leveraged foreign exchange trading, or other property, is or are held;
- (iii) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;
- (iv) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities, futures contracts, or contracts in connection with leveraged foreign exchange trading, or other property of the relevant person or of any person who is associated with the relevant person from a place in Singapore to a place outside Singapore (including the transfer of securities from a register in Singapore to a register outside Singapore);
- (v) an order appointing —
  - (A) where the relevant person is a natural person — a receiver, having such powers as the Court orders, of the property or part of the property of that person; or
  - (B) where the relevant person is a corporation — a receiver or receiver and manager, having such powers as the Court orders, of the property or part of the property of that person;
- (vi) where the relevant person is a natural person — an order requiring that person to deliver up to the Court his passport and such other documents as the Court thinks fit;

(vii) where the relevant person is a natural person — an order prohibiting that person from leaving Singapore without the consent of the Court.

(2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(3) Where the Authority makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Authority or any other person, as a condition of granting an interim order under subsection (2) to give any undertakings as to damages.

(4) Where the Court has made an order under this section, the Court may, on application by the Authority or by any person affected by the order, make a further order rescinding or varying the first-mentioned order.

(5) An order made under this section may be expressed to operate for a period specified in the order or until the order is rescinded by a further order subsection (1) or (4).

(6) A person who contravenes or fails to comply with an order by the Court under this section that is applicable to him 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.

### **Injunctions**

**284.**—(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constitutes or would constitute a contravention of this Act, the Court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that he is required by this Act to do, the Court may, on the application of —

- (a) the Authority; or
- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction under subsections (1) to (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised —

- (a) if the Court is satisfied that the person has engaged in conduct of that kind — whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind — whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised —

- (a) if the Court is satisfied that the person has refused or failed to do that act or thing — whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse

or fail to do that act or thing — whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the Authority makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Authority or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

### **Power of Court to punish for contempt of Court**

**285.** Nothing in a provision of this Act that provides —

- (a) that a person shall not contravene or fail to comply with an order of the Court; or
- (b) that a person who contravenes or fails to comply with an order of the Court is guilty of an offence,

affects the powers of the Court in relation to the punishment of contempt of the Court.

### **Codes, guidelines or no-action letters by Authority**

**286.**—(1) The Authority may publish, in the *Gazette* and in any other manner it considers appropriate, such codes, guidelines and no-action letters as it considers appropriate for providing guidance —

- (a) for the furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Authority under any of the relevant provisions;
- (c) in relation to the operation of any of the provisions of this Act.

(2) Without limiting the generality of subsection (1), the Authority may publish under that subsection —

- (a) a non-statutory code to be known as the “Singapore Code on Take-Overs and Mergers” to provide for matters

concerning takeovers and mergers and matters incidental thereto;

- (b) a non-statutory code to be known as the “Code on Collective Investment Schemes” to provide for matters concerning the constitution, operation, management and offers of collective investment schemes constituted in Singapore.

(3) For the avoidance of doubt, the power of the Authority to publish codes, guidelines or no-action letters under this section is in addition to and not in derogation of any other power of the Authority to publish codes, guidelines or no-action letters under any provision of this or any other Act.

(4) The Authority may from time to time amend the whole or any part of any code, guideline or no-action letter published under this section, and —

- (a) the other provisions of this section apply, with the necessary modifications, to such amendments to the code, guideline or no-action letter as they apply to the code, guideline or no-action letter; and
- (b) any reference in this or any other Act to the code, guideline or no-action letter (however expressed) shall, unless the context otherwise requires, be a reference to the code, guideline or no-action letter as so amended.

(5) A failure on the part of any person to observe any of the provisions of a code, guideline or no-action letter published under this section that apply to him shall not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in the proceedings.

(6) Any code, guideline or no-action letter published under this section —

- (a) may be of general or specific application and may be made so as to apply only in specified circumstances; and
- (b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(7) For the avoidance of doubt, any code, guideline or no-action letter published under this section shall be deemed not to be subsidiary legislation.

(8) In this section, a “no-action” letter is a letter written by the Authority to an applicant to the effect that, if the facts are as represented by the applicant, the Authority will not institute proceedings against the applicant over a particular state of affairs or particular conduct; but the letter does not bind the Public Prosecutor from taking proceedings for an offence based on that state of affairs or conduct.

### **Proceedings by whom to be taken and power to compound offences**

**287.**—(1) Proceedings for an offence —

- (a) against any provision of Part XII may be taken only with the consent of the Attorney-General; and
- (b) against any other provisions of this Act may be taken by the Authority or, with the consent of the Attorney-General, by any other person.

(2) The Authority may, without instituting proceedings against any person for an offence under this Act or the regulations made thereunder which is punishable only by a fine, demand and receive the amount of such fine or such reduced amount as he thinks fit from such person, whereupon —

- (a) if such person pays such amount to the Authority within 14 days after the demand, no proceedings shall be taken against him in relation to the offence;
- (b) if such person does not pay the amount so demanded, the Authority may cause proceedings to be instituted in relation to the offence.

(3) The powers conferred upon the Authority under subsection (2) shall only be exercised where a person admits the offence and agrees in writing to the offence being dealt with under that subsection.

### **General penalty**

**288.** Any person, who fails to comply with any of the provisions of this Act for which no penalty is expressly provided, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

### **Penalties for corporations**

**289.** Except where otherwise expressly provided, where a corporation is convicted of an offence under this Act, the penalty



that the court may impose is a fine not exceeding 2 times the maximum amount that, but for this section, the court could impose as a fine for that offence.

### **Appointment of assistants**

**290.** The Authority may authorise or appoint any person to assist it in the exercise of its functions and duties under this Act, either generally or in any particular case.

### **Jurisdiction of Courts**

**291.** A District Court shall, notwithstanding the Criminal Procedure Code (Cap. 68), have jurisdiction to try any offence under this Act and may impose the full penalty or punishment in respect of such offence.

### **Immunity of Authority and its employees, etc.**

**292.** No suit or other legal proceedings shall lie against the Authority or any officer or employee of the Authority or any person acting under the direction of the Authority for any act done in good faith in the performance, or intended performance, of any duty, or in the exercise of any power under this Act or any regulations made thereunder, or for any neglect or default in the performance or exercise in good faith of such duty or power.

### **Validation of acts done in anticipation of this Act**

**293.** All acts and things done by any person in preparation for or in anticipation of this Act shall be deemed to have been authorised under this Act, provided that the acts and things done are not inconsistent with the general intention and purposes of this Act.

### **Amendment of Schedules**

**294.—(1)** The Minister may, by order published in the *Gazette*, at any time amend the Schedules.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions as may be necessary or expedient.

(3) Any order made under subsection (1) shall be presented to Parliament as soon as possible after publication in the *Gazette*.

(4) The Authority may by order or regulation modify any of the definitions in the Second Schedule by disapplying or applying it to such other person, capital markets product or unit of account as

may be prescribed and such order may provide for any necessary modification or adaptation to that definition.

### **Regulations**

**295.**—(1) The Authority may, from time to time, make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

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

- (a) the criteria for authorisation or recognition of collective investment schemes and the constitution, operation, management and offer of such schemes including but not limited to the powers and duties of the managers, trustee or representative and the rights and obligations of the participants of the schemes;
- (b) the financial requirements and other criteria that a public company must fulfill for it to be considered for approval as a trustee;
- (c) applications for capital markets services licences to carry on a business in any regulated activity or renewal of licences by persons holding a capital markets services licence to carry on a business in any regulated activity and their representatives and matters incidental thereto;
- (d) the activities of, and standards to be maintained by persons holding a capital markets services licence to carry on a business in any regulated activity and their representatives, including the manner, method and place of soliciting business by the holder of the licence and their representatives and the conduct of such solicitation;
- (e) prescribing the appropriate standards with respect to the qualifications, experience and training of applicants for any licence;
- (f) prescribing the conditions for the conduct of business on a securities exchange, futures exchange, recognised trading system provider, or clearing house;
- (g) providing for the content and distribution of written, printed or visual material and advertisements that may be distributed or used by a person in respect of securities, futures contracts, foreign exchange trading or leveraged foreign exchange trading;

- (h) prescribing the form and content of a contract note or confirmation statement of securities, futures contracts, or contracts in connection with leveraged foreign exchange trading;
- (i) prescribing the particulars to be recorded in, or in respect of accounts kept by persons holding a capital markets services licence to carry on a business in any regulated activity;
- (j) prescribing the particulars to be recorded in the profit and loss accounts and balance-sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of persons holding a capital markets services licence to carry on a business in any regulated activity;
- (k) providing for the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;
- (l) the manner in which persons holding a capital markets services licence to carry on a business in any regulated activity conducts its dealings with its customers, conflicts of interest involving the holder of the licence and its customers, and the duties of a holder of a licence to its customers when making recommendations in respect of capital markets products;
- (m) purchasing or selling of capital markets products for their own accounts, directly or indirectly by holders of capital markets services licences to carry on a business in any regulated activity and their representatives;
- (n) providing for the disclosure by a holder of a capital markets services licence of any material interest that such person might have in a proposed transaction relating to trading in capital markets products;
- (o) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of securities, futures contracts or leveraged foreign exchange trading;
- (p) the regulation or prohibition of trading on the floor of a securities exchange by members of a securities exchange or their representatives directly or indirectly for their own accounts or for discretionary accounts and the prevention of such excessive trading on a securities exchange but off

the floor of a securities exchange by members of a securities exchange or their representatives directly or indirectly for their own accounts as the Authority may consider is detrimental to the maintenance of a fair and orderly market; and regulations under this paragraph may provide for the exemption of such transactions as the Authority may decide to be necessary in the public interest or for the protection of investors;

- (q) the borrowing in the ordinary course of business by persons holding a capital markets services licence to deal in securities as the Authority may consider necessary or appropriate in the public interest or for the protection of investors;
  - (r) the publication of advertisements offering the services of persons holding a capital markets services licence to deal in securities or offering securities for purchase or sale and the form and contents of such advertisements;
  - (s) the prohibition or regulation of dealing in securities in circumstances where the person who deals in the securities does not hold or have an interest in the securities which are being or are proposed to be dealt with;
  - (t) prohibiting or restricting forward contracts in shares of corporations that are admitted to the official list of a securities exchange;
  - (u) prescribing any forms for the purposes of this Act;
  - (v) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act;
  - (w) for the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to capital markets products as may be prescribed and for the collection and use of such information for any purpose, whether or not connected with the prescribed capital markets products; and
  - (x) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.
- (3) No use shall be made of any information obtained by or on behalf of the Authority by virtue only of paragraph (w) of

subsection (2) except in a form which does not disclose the affairs of any particular person.

(4) Except as otherwise expressly provided in this Act, the regulations —

(a) may be of general or specifically limited application; and

(b) may provide for the imposition —

(i) in the case of an individual, of a fine not exceeding \$25,000 or imprisonment for a term not exceeding 12 months or both for any contravention thereof; or

(ii) in the case of a company or body corporate, of a fine not exceeding \$50,000.

### **Repeal of the Securities Industry Act and Futures Trading Act**

**296.** The Securities Industry Act (Cap.289 of 1985) and Futures Trading Act (Cap.116 of 1996) are repealed.

### **Transitional and saving provisions**

**297.**

### **Consequential amendments to other written laws**

**298.** The enactments specified in the first column of the Schedule are amended in the manner set out in the second column thereof.

## THE SCHEDULE

Delete Division 1, 5A and 6 and section 130O, 213, 214, 400, 404 of the Companies Act (Cap. 50).

Change “Securities Industry Act” to “Securities and Futures Act” in the Companies Act (Cap. 50).

Change “stock exchange” to “securities exchange” in the Companies Act (Cap. 50).

To amend section 2 of the Moneylenders Act (Cap. 188) to include “(f) any person licensed under the Securities and Futures Act.”

## FIRST SCHEDULE

## MARKETS

“foreign exchange market” means —

- (a) a market, whether in Singapore or outside Singapore, at which foreign exchange trading regularly takes place on a centralised basis; or
- (b) an electronic system, whether operating in Singapore or elsewhere, through which foreign exchange trading is conducted on a centralised basis;

but excludes

- (i) a facility, whether electronic or otherwise, and whether provided in Singapore or outside Singapore, which merely provides price or other information on foreign exchange (whether the facility is part of or carried on in conjunction with the provision of any other information not related to foreign exchange) and which does not permit users of the facility to channel orders for, execute transactions in, or make a market in, foreign exchange transactions; (ii) a facility or place used by only one person to regularly trade in foreign exchange.

“futures market” means —

- (a) a market, a futures exchange or other place, whether in Singapore or elsewhere, at which trading in futures contracts regularly takes place on a centralised basis; or
- (b) an electronic system, whether operating in Singapore or elsewhere, through which trading in futures contracts is conducted on a centralised basis;

but excludes

- (i) a facility, whether electronic or otherwise, and whether provided in Singapore or outside Singapore, which merely provides price or other information on futures contracts (whether the facility is part of or carried on in conjunction with the provision of any other information not related to futures contracts) and which does not permit users of the facility to channel orders for, execute transactions in, or make a market in, futures contracts;
- (ii) a facility or place used by only one person to regularly trade in futures contracts.

stock market” means a market, or other place at which, or a facility by means of which —

- (a) offers or invitations to sell, purchase or exchange issued securities are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result in the making or acceptance of offers to sell, purchase or exchange such issued securities at the quoted prices;
- (b) offers or invitations are regularly made, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange issued securities on a centralised basis; or
- (c) information is regularly provided, on a centralised basis, concerning the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange issued securities,

but excludes

- (i) a facility, whether electronic or otherwise, and whether provided in Singapore or outside Singapore, which merely provides price or other information on the sale, purchase or exchange of securities (whether or not the facility is part of or operated in conjunction with the provision of any other information not related to the sale, purchase or exchange of securities) and which does not permit users of the facility to channel orders for, execute transactions in, or make a market in, securities;
- (ii) a facility or place used by only one person -
  - (a) to regularly make offers or proposals to acquire or dispose of securities; or
  - (b) regularly accept offers to acquire or dispose of securities.

## SECOND SCHEDULE

### TYPES OF REGULATED ACTIVITIES

The following are regulated activities for the purposes of this Act:

- (a) dealing in securities;
- (b) trading in futures contracts;
- (c) leveraged foreign exchange trading;
- (d) advising on corporate finance;
- (e) providing fund management
- (f) providing securities financing;
- (g) providing custodial services for securities;

“advising on corporate finance” means giving advice —

- (a) concerning compliance with or in respect of laws or regulatory requirements relating to the raising of funds by a body corporate, including the listing rules of a securities exchange;
- (b) concerning —
  - (i) any offer to dispose of securities to the public;
  - (ii) any offer to acquire securities from the public; and
  - (iii) acceptance of any offer referred to in sub-paragraph (i) or (ii); or
- (c) concerning the arrangement, reconstruction and/or take-over of any corporation or any of its assets or liabilities,

but does not include any advice given by a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

“providing custodial services for securities” means providing a service where the person providing the service —

- (a) has under an arrangement with another person (the customer), possession or control of securities of the customer; and
- (b)(i) carries out one or more of the following functions:
  - (A) settling a transaction relating to the securities;
  - (B) collecting or distributing dividends or other pecuniary benefits derived from the securities;
  - (C) paying tax or other costs associated with the securities;
  - (D) exercising rights (for example, voting rights) attached to or derived from the securities;
  - (E) any other function necessary or incidental to the safeguard or administration of the securities; or
- (ii) facilitates the borrowing and lending of securities



and includes agreeing or undertaking to provide custodial services for securities, but does not include:

- (a) the operation of a clearing house and a depository as defined in Division 7 of the Companies Act (Cap. 50);
- (b) the provision of services to a related corporation or connected person, so long as none of the securities is —
  - (i) held on trust for another person by the related corporation or connected person;
  - (ii) held as a result of any investment contract entered into by the related corporation or connected person; or
  - (iii) beneficially owned by any person other than the related corporation or connected person ;
- (c) the provision of services by a nominee corporation whose carrying on of that business is solely incidental to the practice of his profession of acting as a nominee; or
- (d) any other conduct the Authority may by regulations prescribe;

“dealing in securities” means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into —

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;

“foreign exchange trading” means the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement the effect of which is that —

- (a) one party agrees to exchange currency at an agreed rate of exchange with another party whether the currency exchange is effected at the same time or at a specified future time and whether by way of delivery of an amount of currency for another currency, by way of crediting the account of the other party with an amount of another currency, by way of settlement or set-off between 2 or more persons or otherwise; or
- (b) a party agrees to settle in any manner with another party the difference between the value of any currency index agreed at the time of the making of the contract or arrangement and at a specified future time,

but does not include any act performed for or in connection with a contract or an arrangement or a proposed contract or proposed arrangement which falls within the definition of “futures contract” in section 2;

“leveraged foreign exchange trading” means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into a contract or an arrangement on a margin basis (other than a contract or an arrangement that is made on a futures market) whereby —

- (a) a person undertakes as determined by the terms and conditions of the contract or arrangement —
  - (i) to make an adjustment between himself and another person according to whether a currency is worth more or less, as the case may be, in relation to another currency;
  - (ii) to pay an amount of money determined or to be determined by reference to the change in value of a currency in relation to another currency; or
  - (iii) to deliver to another person at an agreed future time an agreed amount of currency at an agreed price;
- (b) a person undertakes to settle in any manner with another person the difference between the value of any currency index agreed at the time of the making of the contract or arrangement and at a specified future time;
- (c) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or
- (d) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person (whether on a discretionary basis or otherwise) to enter into any contract to facilitate an act of the description mentioned in paragraph (a) or (b),

but shall not include any act performed for or in connection with a contract or an arrangement or a proposed contract or proposed arrangement —

- (i) arranged by a bank that is licensed under the Banking Act (Cap.19) or a merchant bank approved under the Monetary Authority of Singapore Act (Cap.186);
- (ii) by any person belonging to such class of persons, or carrying on such class or description of business as may be prescribed by the Authority; or
- (iii) which falls within the definition of “futures contract” in section 2;

“on a margin basis”, in relation to the definition of leveraged foreign exchange trading, means the first-mentioned person referred to in the definition of “leveraged foreign exchange trading” entering into the contract or arrangement referred to therein by providing to the offeror or his agent with money, securities, property or other collateral which represents only a part of the value of the contract or arrangement to be entered into by him;

“providing securities financing” means to directly or indirectly facilitate, by providing any credit facility, advance or loan, —

- (a) the acquisition of securities listed on a stock market or such other securities as the Authority may by regulation prescribe; and
- (b) (where applicable) the continued holding of those securities,

whether or not those securities are pledged as security for the credit facility, advance or loan, but does not include —

- (i) an activity referred to in paragraph (a) which is or forms part of a stock borrowing or stock return; or
- (ii) the provision of any credit facility, advance or loan —
  - (A) that forms part of an arrangement to underwrite or sub-underwrite securities;
  - (B) to facilitate an acquisition of securities in accordance with the terms of a prospectus, regardless of whether the offer of securities is made in Singapore or elsewhere;
  - (C) to a holder of a capital markets services licence to deal in securities or provide securities financing or a financial institution to facilitate acquisitions or holdings of securities;
  - (D) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities;
  - (E) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member; or
  - (F) by an individual to a company in which he holds 10% of more of its issued share capital to facilitate acquisitions or holdings of securities;

“financial institution” means —

- (a) any bank as defined in the Banking Act (Cap.19);
- (b) any merchant bank that is approved as a financial institution under the Monetary Authority of Singapore Act (Cap.186); or
- (c) any finance company which has been granted an exemption from section 25(2) of the Finance Companies Act (Cap.108.);

“providing fund management” means to undertake on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) the management of a portfolio of securities or futures contracts, or to undertake on behalf of a customer foreign exchange trading or leveraged foreign exchange trading for the purpose of managing the customer’s funds;

“trading in futures contracts” means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for the purchase or sale of a futures contract.

## THIRD SCHEDULE

Section 70(2)(b)

## SPECIFIED PERSONS

1. Any company registered under the Trust Companies Act (Cap.336) whose carrying on of the business in that regulated activity is solely incidental to its carrying on of the business for which it is registered under that Act.
2. Any public statutory corporation established under any Act in Singapore.
3. Any —
  - (a) advocate and solicitor of the Supreme Court of Singapore, foreign lawyer who is registered under the Legal Profession Act (Cap.161), law corporation or Joint Law Venture which is approved under that Act; or
  - (b) public accountant who is registered under the Accountants Act (Cap.2A) or accounting corporation which is approved under that Act, whose carrying on of the business in that regulated activity is solely incidental to the practice of his or its profession.
4. Any approved trustee under Division 3 of Part XIII of this Act.
5. The Official Assignee in exercising his powers under the Bankruptcy Act (Cap.20).
6. The Public Trustee in exercising his powers under the Public Trustee Act (Cap.260).
7. Any liquidator, provisional liquidator, receiver, receiver and manager or judicial manager of a company appointed under the Companies Act (Cap.50) in exercising his powers under that Act.