

CONSULTATION PAPER

16 - 2003
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Regulation of Business Trusts II (Offers of Business Trusts)

MAS

Monetary Authority of Singapore

On 10 Dec 2003, MAS issued a consultation paper setting out the key proposals for the governance and offers of business trusts. The consultation paper included the draft Business Trusts Bill, which encapsulated provisions on the governance framework for business trusts.

2 As business trusts are operating businesses like companies, MAS proposes to regulate offers of interests in business trusts by way of disclosure requirements in prospectuses, in the same way that offers of shares in companies are regulated. This consultation paper contains the draft provisions on offers of interests in business trusts to be set out in a new division under Part XIII of the Securities and Futures Act.

3 MAS invites interested parties to comment on the draft offer provisions. Please submit your written comments to MAS by 19 Jan 2004, indicating whether confidentiality is requested, addressed to:

Market Conduct Policy Division
Market and Business Conduct Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117
Email: btcon@mas.gov.sg
Fax: (65)6225-9766

4 Please note that all submissions received may be made public unless confidentiality is specifically requested for whole or part of the submission.

DRAFT SECURITIES AND FUTURES (AMENDMENT) BILL 2004

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

SECURITIES AND FUTURES (AMENDMENT) ACT 2004

Short title and commencement

1. This Act may be cited as the Securities and Futures (Amendment) Act 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2(1) of the Securities and Futures Act (referred to in this Act as the principal Act) is amended –
 - (a) by inserting, immediately after paragraph (e) in the definition of “securities” the following paragraph:

“(f) any interest in a trust”;

- (b) by inserting, immediately after the definition of “holding company”, the following definition:

““interest”, in relation to a trust, means a right or financial stake (however described) of a unitholder in the trust (whether the right is actual, prospective or contingent and whether it is enforceable or not);”.

New Division 1A of Part XIII

3. The principal Act is amended by inserting, immediately after section 282, the following Division of Part XIII:

“

Division 1A — Interests in Trusts

Subdivision (1) — Interpretation

Preliminary provisions

[239.] 282A —(1) In this Division —

“business trust” means a trust that is either a registered business trust or a recognised business trust;

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

"minimum subscription" in relation to any interests or units of interests in a business trust offered to the public for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which must be raised by the issue of the interests so offered;

"preliminary document" means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, interests or units of interests in a trust or proposed trust to be issued or sold and which contains the information required to be included in a prospectus under sections [243] except for such information as may be prescribed by the Authority;

"profile statement" means a profile statement referred to in section [240] (4);

"promoter" , in relation to a prospectus issued in connection with the business trust, means a promoter of the business trust who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

"prospectus" means any prospectus, notice, circular, material, advertisement, publication or other document inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any interests or units of interests in a trust or proposed trust and includes any document deemed to be a prospectus under section [257], but does not include —

(a) a profile statement; or

(b) any material, advertisement or publication which is authorised by section [251] (other than subsection (5));

“recognised business trust” means a trust recognised under section 6(1) of the Business Trust Act (Cap. __);

“registered business trust” has the same meaning as in section 2 of the Business Trust Act (Cap. __);

"replacement document" means a replacement prospectus or a replacement profile statement referred to in section [241] (1), as the case may be;

"supplementary document" means a supplementary prospectus or a supplementary profile statement referred to in section 241(1), as the case may be;

“trustee-manager”, in relation to a registered business trust has the same meaning as in the Business Trust Act (Cap. __) and in relation to a recognised business trust means the persons operating the recognised business trust, by whatever name called and whether incorporated or not and in relation to a trust for which an application for registration has been made under section 4(1) of the Business Trust Act (Cap. __) means the person proposed to be named as the trustee-manager in the application made under that section and in relation to a trust for which an application for recognition has been made under section 6(1) of the Business Trust Act (Cap. __) means the person proposed to be operating the trust, by whatever name called and whether incorporated or not;

“trust deed” has the same meaning as “deed” in section 2 of the Business Trust Act (Cap. __);

“trust property” has the same meaning as in section 2 of the Business Trust Act (Cap. __);

"unit" , in relation to an interest in a trust, means any right or interest, whether legal or equitable, in the interest of the trust, by whatever name called, and includes any option to acquire any such right or interest in the interest of the trust.

“unitholder” means a person who holds interests in a business trust (whether as a contributor to the business trust or as a person who acquired such interests from another person who is or was a unitholder in the business trust);

(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(6) Any reference in this Division to making an offer to the public of interests or units of interests in a trust or business trust for subscription or purchase, or making an invitation to the public to subscribe for or purchase interests or units of interests in a trust, shall, unless the contrary intention appears —

(a) include a reference to —

- (i) making an offer of interests or units of interests in a trust or business trust to any section of the public for subscription or purchase, or to making an invitation to any section of the public to subscribe for or purchase interests or units of interests in a trust or business trust, as the case may be, whether by selection as customers of the person making the offer or the invitation or in any other manner;
- (ii) inviting applications from any section of the public to subscribe for or purchase interests or units of interests in a trust or business trust; and
- (iii) the provision of any facility, made available to the public or any section of the public, that enables a person to subscribe for or purchase interests or units of interests in a trust or business trust;

(b) but does not include the following:

- (i) an offer or invitation to enter into an underwriting agreement relating to interests or units of interests in a trust or business trust; and
- (ii) an offer or invitation made to existing unitholders of a business trust (whether or not it is renounceable in favour of persons other than existing unitholders) which —
 - (A) relates to interests in that business trust, or to units of such interests; and
 - (B) is not an offer or invitation to which section [256] applies.

Authority may disapply this Division to certain offers and invitations

[239A.] 282B Notwithstanding any provision to the contrary in this Division, where —

- (a) an offer to the public of, or an invitation to the public to subscribe for or purchase, interests or units of interests is one to which (but for this section) both this Division and Division 2 apply; and
- (b) the Authority has by order published in the *Gazette* declared that this Division shall not apply to that offer or invitation or a class of offers or invitations to which that offer or invitation belongs,

then this Division does not apply to that offer or invitation.

Subdivision (2) — Prospectus Requirements

Requirement for prospectus and profile statement, where relevant

[240.] 282C—(1) No person shall make an offer to the public of interests or units of interests in a trust for subscription or purchase, or an invitation to the public to subscribe for or purchase interests or units of interests (other than an offer or invitation to the public of such interests made to persons specified under section 274 or 275) in a trust unless -

- (a) such trust is a registered business trust or recognised business trust; and
- (b) such offer or invitation —
 - (i) is made in or accompanied by a prospectus in respect of the offer or invitation —
 - (A) that is prepared in accordance with sections [243];
 - (B) a copy of which, being one that has been signed by every director or equivalent person, and by every person who is named therein as a proposed director or equivalent person, of the trustee-manager of the trust or by a person authorised by him, is lodged with the Authority together with a written application for the registration of the prospectus; and
 - (C) that is registered by the Authority; and
 - (ii) complies with such requirements as may be prescribed by the Authority.

(2) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

(3) A preliminary document referred to in subsection (2) must contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

(4) Notwithstanding subsection (1), an offer to the public of interests or units of interests in a business trust for subscription or purchase, or an invitation to the public to subscribe for or purchase interests or units of interests in a business trust, may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this section as a profile statement), instead of a prospectus, if —

- (a) a prospectus in respect of such offer or invitation is prepared in accordance with sections [243] and the profile statement is prepared in accordance with section [246];
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed by every director or equivalent person, and by every person who is named therein as a proposed director or equivalent person, of the trustee-manager of the trust or by a person authorised by him, are lodged with the Authority together with a written application for the registration of the prospectus and a written application for the registration of the profile statement respectively, and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and

(e) the offer or invitation complies with such requirements as may be prescribed by the Authority.

(5) No person shall make any offer to the public of interests or units of interests in a trust for subscription or purchase, or an invitation to the public to subscribe for or purchase interests or units of interests in a trust if that trust has not been formed or does not exist.

(6) Subsection (1) shall not apply to an offer or invitation in respect of interests or units of interests in a trust that is exempted under Subdivision [4].

(7) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

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

- (a) the Authority gives to the person who lodged the prospectus or profile statement a notice of an opportunity to be heard under subsection (15);
- (b) the Authority gives notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
 - (i) register the prospectus or profile statement; or
 - (ii) give to the person who lodged the prospectus or profile statement a notice of an opportunity to be heard under subsection (15); or
- (c) the person who lodged the prospectus or profile statement applies in writing for the prospectus or profile statement to be registered at a later date, in which case the Authority may register the prospectus or profile statement at such later date as the Authority thinks fit.

(9) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus containing the information required to be stipulated in the prospectus under sections [243], including such information which could be omitted from the preliminary document by virtue of subsection (3), has been furnished to the Authority.

(10) Subject to subsection (11) —

- (a) where any amendment to a prospectus is lodged prior to the registration of such prospectus, the prospectus and any profile statement which is lodged shall be deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged; and
- (b) where any amendment to a profile statement is lodged prior to the registration of such profile statement, the profile statement shall be deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged.

(11) Where an amendment to a prospectus or profile statement is lodged prior to the registration of the prospectus or profile statement —

- (a) with the consent of the Authority; or
- (b) pursuant to an order by the Authority,

the prospectus or profile statement as amended shall be deemed for the purposes of subsection (8) to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(11A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

(12) The Authority may, for public information publish –

- (a) a prospectus or profile statement lodged with the Authority under this section; and
- (b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A,

and, for the purposes of this subsection, the person who lodges the prospectus or profile statement and, where applicable, the translation shall provide the Authority with a copy of the prospectus or profile statement in such form or medium for publication as the Authority may require.

(13) 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;
- (b) there is an omission from the prospectus of any information that is required to be included in it under section [243];
- (c) a copy of the prospectus signed by every director or equivalent person, and by every person who is named therein as a proposed director or equivalent person of the trustee-manager of the trust or by a person authorised by the director or proposed director in writing, is not lodged with the Authority;
- (d) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
- (e) copies verified as prescribed of any consent required by section [249] to the issue of the prospectus are not lodged with the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

(14) The Authority shall refuse to register a copy of any profile statement if —

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement or matter;
- (b) there is an omission from the profile statement of information required by section 246 to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;
- (c) a copy of the profile statement signed by every director or equivalent person, and by every person who is named therein as a proposed director or equivalent person of the trustee-manager of the trust or by a person authorised by the director or proposed director in writing, is not lodged with the Authority;
- (d) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
- (e) the prospectus has not been registered by the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

(15) The Authority shall not refuse to register a copy of a prospectus under subsection (13) or profile statement under subsection (14) without giving the person who lodged the prospectus or profile statement an opportunity to be heard, except that an opportunity to be heard need not be given if the

refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

- (a) the trustee-manager of the trust or the trust is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the trustee-manager of the trust or the trust property of the trust.

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

(17) If —

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

the trustee-manager of the business trust) and every person who is knowingly a party to —

- (i) the issue, circulation or distribution of the prospectus or profile statement;
 - (ii) the acceptance of the application to subscribe for or purchase the interests or units of interests; or
 - (iii) the allotment, issue or sale of the interests or units of interests,
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(18) Every trustee-manager of a business trust shall cause a true copy of every document referred to in subsection (13) (e) to be deposited within 7 days after registration of the prospectus at the registered office of the trustee-manager in Singapore and, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(19) Every trustee-manager of a business trust shall keep a true copy of every document referred to in subsection (13) (e), for a period of at least 6 months after the registration of the prospectus, to be made available for the inspection of the unitholders of the business trust without fee.

(20) 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.

Lodging supplementary document or replacement document

[241.] **282D**—(1) If, after a prospectus or profile statement is registered but before the close of the offer or invitation, the person making the offer or invitation to the public to subscribe for or purchase interests or units of interests in a business trust becomes aware of —

- (a) a false or misleading statement or matter in the prospectus or profile statement;

- (b) an omission from the prospectus of any information that should have been included in it under section [243], or an omission from the profile statement of any information that should have been included in it under section [246], as the case may be; or
- (c) a new circumstance that —
 - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
 - (ii) would have been required by —
 - (A) section [243] to be included in the prospectus; or
 - (B) section [246] to be included in the profile statement,

if it had arisen before the prospectus or the profile statement, as the case may be, was lodged, and 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 trustee-manager of the business trust shall take reasonable steps to inform potential investors of such lodgment and make available the supplementary document to them.

(6) For the purposes of the application of this Division 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 original prospectus together with the supplementary prospectus and any previous supplementary prospectus; and
- (b) where the supplementary document is a supplementary profile statement, the profile statement shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement.

(6A) The person who lodges a replacement document or the trustee-manager of the business trust shall take reasonable steps to inform potential investors of such lodgment and make available the replacement document to them.

(6B) For the purposes of the application of this Division 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 replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement shall be taken to be the replacement profile statement.

(7) If a supplementary document or replacement document is lodged with the Authority, the offer or invitation shall be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

(8) Where prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for interests or units of interests in a business trust and —

- (a) where the interests or units of interests in the business trust have not been issued to the applicants, the trustee-manager of the business trust shall either —
 - (i) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or
 - (ii) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled, and the trustee-manager of the business trust shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the interests or units of interests in the business trust; or
- (b) where the interests or units of interests in the business trust have been issued to the applicants, the trustee-manager shall either —
 - (i) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return interests or units of interests in the business trust which they do not wish to retain; or
 - (ii) treat the issue of the interests or units of interests in the business trust as void, in which case the issue shall be deemed void and the trustee-manager of the business trust shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the interests or units of interests in the business trust.

(9) Intentionally omitted.

(10) An applicant who wishes to exercise his option under subsection (8) (a) (i) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document notify the trustee-manager of the business trust of this, whereupon the trustee-

manager shall, within 7 days from the receipt of such notification, pay to him all moneys paid by him on account of his application for the interests or units of interests.

(11) An applicant who wishes to exercise his option under subsection (8) (b) (i) to return interests or units of interests issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the trustee-manager of the business trust of this and return all documents, if any, purporting to be evidence of title to those interests or units of interests to the trustee-manager, whereupon the trustee-manager shall, within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for interests or units of interests and the issue of those interests or units of interests shall be deemed to be void.

(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase interests or units of interests in a business trust and —

- (a) where the interests or units of interests in the business trust have not been sold to the applicants, the trustee-manager of the business trust shall either —
 - (i) on behalf of the vendor, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or
 - (ii) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled and the trustee-manager of the business trust shall, on behalf of the vendor, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the interests or units of interests in the business trust; or
- (b) where the interests or units of interests in the business trust have been sold to the applicants, the trustee-manager of the business trust shall either —
 - (i) on behalf of the vendor, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return interests or units of interests in the business trust which they do not wish to retain; or
 - (ii) treat the sale of the interests or units of interests in the business trust as void, in which case the sale shall be deemed void and the trustee-manager of the business trust shall, on behalf of the vendor —
 - (A) if documents purporting to evidence title had been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document, inform the applicants to return such documents to the trustee-manager of the business trust within 14 days from that date; and
 - (B) within 7 days from the date of the receipt of those documents (if applicable) or the date of the lodgment of the supplementary document or replacement document, whichever is later, pay to the applicants all moneys paid by them for the interests or units of interests in the business trust.

(13) An applicant who wishes to exercise his option under subsection (12) (a) (i) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the trustee-manager of this whereupon the trustee-manager of the business trust shall, on behalf of the vendor, within 7 days of the receipt of such notification, pay to him all moneys paid by him on account of his application for the interests or units of interests.

(14) An applicant who wishes to exercise his option under subsection (12) (b) (i) to return interests or units of interests sold to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the trustee-manager of the business trust of this and return all documents, if any, purporting to evidence title to those interests or units of interests to the trustee-manager, whereupon the trustee-manager shall, on behalf of the vendor, within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for the interests or units of interests and the sale of those interests or units of interests shall be deemed to be void.

(15) Any person who contravenes subsection (8) or (12) 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.

(16) Any person who contravenes any other provision of this section 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.

Stop order for prospectus and profile statement

[242.] 282E—(1) If a prospectus has been registered and —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement or matter;
 - (b) there is an omission from the prospectus of any information that is required to be included in it under section [243]; or
 - (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or
 - (d) the Authority is of the opinion that it is in the public interest to do so,
- the Authority may by an order in writing (referred to in this section as a stop order) served on the person who lodged the prospectus direct that no or no further interests or units of interests in a business trust to which the prospectus relates be allotted, issued or sold.

(2) If a profile statement has been registered and —

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement or matter;
- (b) there is an omission from the profile statement of any information that is required to be included in it under section [246]; or
- (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by an order in writing (referred to in this section as a stop order) served on the person who lodged the profile statement direct that no or no further interests or units of interests in a business trust to which the profile statement relates be allotted, issued or sold.

(3) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the interests or units of interests in a business trust to which the prospectus or profile statement relates have been issued or sold, and listed on a securities exchange and trading in them has commenced.

(4) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person who lodged the prospectus or profile statement an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is not in the public interest to do so on the basis of any of the following circumstances:

- (a) the trustee-manager of the business trust or the business trust is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the trustee-manager or the trust property of the business trust.

(5) Where applications to subscribe for interests or units of interests in a business trust to which the prospectus or profile statement relates have been made prior to the stop order, and —

- (a) where the interests or units of interests in the business trust have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the trustee-manager of the business trust shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the interests or units of interests in the business trust ; or
- (b) where the interests or units of interests in the business trust have been issued to the applicants, the issue of the interests or units of interests in the business trust shall be deemed to be void and the trustee-manager of the business trust shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the interests or units of interests in the business trust.

(6) Intentionally omitted

(7) Where applications to purchase interests or units of interests in a business trust to which the prospectus or profile statement relates have been made prior to the stop order, and —

- (a) where the interests or units of interests in the business trust have not been sold to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the trustee-manager of the business trust shall, on behalf of the vendor, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the interests or units of interests in the business trust; or
- (b) where the interests or units of interests in the business trust have been sold to the applicants, the sale shall be deemed to be void and the trustee-manager shall, on behalf of the vendor —
 - (i) if documents purporting to evidence title had been issued to the applicants, within 7 days from the date of the stop order, inform all applicants to return such documents to the trustee-manager of the business trust within 14 days from that date; and

- (ii) within 7 days from the date of the receipt of those documents (if applicable) or the date of the stop order, whichever is later, pay to the applicants all moneys paid by them for the interests or units of interests in the business trust.

(8) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person who lodged the prospectus or profile statement directing that no or no further interests or units of interests in a business trust to which the prospectus or profile statement relates be allotted, issued or sold.

(9) An interim stop order shall, unless revoked by the Authority, be in force —

(a) in a case where —

- (i) it is served during a hearing under subsection (4); or
- (ii) a hearing under subsection (4) is commenced while it is in force, until the Authority makes an order under subsection (1) or (2); and

(b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(10) Subsections (5) and (7) shall not apply where only an interim stop order has been served.

(11) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(12) Any person who contravenes subsection (5) or (7) 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.

Contents of prospectus

[243.] 282F—(1) A prospectus for an offer to the public of interests or units of interests in a business trust for subscription or purchase, or for an invitation to the public to subscribe for or purchase interests or units of interests in a business trust 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 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 —

- (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 interests or units of interests in the business trust;
- (b) the assets and liabilities, profits and losses, financial position and performance, and prospects of the business trust in which interests or units of interests are to be issued or have been issued;
- (c) if the person making the offer or invitation is one who controls the business trust, the interests of which underlie the offer or invitation, the assets and liabilities, profits and losses, financial position and performance, and prospects of that business trust; and
- (d) in the case of options over interests, the capacity of the person making the offer or invitation to issue or deliver the relevant interests.

(4) In deciding what information shall be included under subsection (1) (a), regard shall be had to —

- (a) the nature of the interests or units of interests in the business trust and the nature and scope of business of the business trust;
- (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 making the offer or invitation;
- (b) if the person making the offer or invitation is a corporation, a director of the corporation;
- (ba) the trustee-manager of the business trust;
- (c) a director or proposed director of the trustee-manager;
- (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 interests or units of interests in a business trust 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.

[245.] Intentionally omitted.

Contents of profile statement

[246.] 282G—(1) A profile statement for an offer to the public of interests or units of interests in a business trust for subscription or purchase, or an invitation to the public to subscribe for or purchase interests or units of interests in a business trust shall contain —

- (a) the following particulars:
 - (i) identification of the business trust and trustee-manager of the business trust and the nature of the interests or units of interests in respect of which the offer or invitation is made to the public;
 - (ii) the nature of the risks involved in investing in the interests or units of interests; and
 - (iii) details of all amounts payable in respect of the interests or units of interests (including any amount by way of fee, commission or charge);
- (b) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and
- (c) a statement that the directors of the trustee-manager of the business trust are satisfied that the profile statement contains a fair summary of the key information set out in the prospectus.

(2) 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.

Exemption from requirements as to form or content of prospectus or profile statement

[247.] 282H—The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.

- (2) The Authority shall not grant an exemption under subsection (1) unless it is of the opinion that –
 - (a) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or
 - (b) it would not be prejudicial to the public interest if the requirement in respect of which exemption has been applied for were dispensed with.

(3) The Authority may exempt any class of persons, or any class or description of prospectuses or profile statements from any requirement of this Act relating to the form or content of a prospectus or a profile statement, subject to such conditions or restrictions as may be determined by the Authority.

(4) Any person who contravenes any of the conditions or restrictions imposed under subsection (1) or (3) 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.

[248.] Intentionally omitted.

Expert's consent to issue of prospectus containing statement by him

[249.] 282I—(1) A prospectus making an offer of, or inviting subscription for or purchase of, interests or units of interests in a business trust 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) the expert 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 the expert has given and has not withdrawn his consent.

(2) If any prospectus is issued in contravention of subsection (1), the trustee-manager of the business trust and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(3) The Authority may exempt any person or class of persons, or any prospectus or class or description of prospectuses, from this section, subject to such conditions or restrictions as may be determined by the Authority.

(4) Any person who contravenes any of the conditions or restrictions imposed under subsection (3) 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.

Duration of validity of prospectus

[250.] 282J—(1) No person shall —

- (a) make an offer to the public of interests or units of interests in a business trust for subscription or purchase;
 - (b) make an invitation to the public to subscribe for or purchase interests or units of interests in a business trust; or
 - (c) allot, issue or sell to the public interests or units of interests in a business trust,
- on the basis of a prospectus or profile statement after the expiration of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, invitation, allotment, issue or sale.

(2) No officer or equivalent person of the trustee-manager, or promoter of the business trust, shall authorise or permit the making of —

- (a) an offer to the public of interests or units of interests in a business trust for subscription or purchase;
- (b) an invitation to the public to subscribe for or purchase interests or units of interests in a business trust; or
- (c) an allotment, issue or sale to the public of interests or units of interests in a business trust,

on the basis of a prospectus or profile statement after the expiration of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, invitation, allotment, issue or sale.

(3) If default is made in complying with subsection (1) or (2), the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(4) Where an allotment, issue or sale of interests or units of interests in a business trust is made on the basis of a prospectus or profile statement after the expiration of 6 months from the date of registration by the Authority of the prospectus in relation to such allotment, issue or sale, such allotment, issue or sale shall not, by reason only of that fact, be voidable or void.

Restrictions on advertisements, etc.

[251.] 282K—(1) If a prospectus is required for an offer or invitation, or intended offer or invitation, of interests or units of interests in a trust to the public for subscription or purchase, a person shall not

—
(a) advertise the offer or invitation or intended offer or invitation; or
(b) publish a statement that —
(i) directly or indirectly refers to the offer or invitation or intended offer or invitation; or
(ii) is reasonably likely to induce persons to subscribe for or purchase the interests or units of interests,
unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —
(a) indirectly refers to an offer or invitation, or intended offer or invitation, of interests or units of interests in a trust; or
(b) is reasonably likely to induce persons to subscribe for or purchase interests or units of interests in a trust, regard shall be had to whether the statement —
(i) forms part of the —
(A) normal advertising by a trustee of a trust (including the trustee-manager of a business trust) on behalf of the trust in respect of the products or services offered by the trustee on behalf of the trust, and is genuinely directed at maintaining existing customers, or attracting new customers, for those products or services; or
(B) 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; or
(ii) communicates information that materially deals with the affairs of the trust; 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.

(3) Notwithstanding subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to persons specified in sections [274] and [275] without contravening subsection (1), if —

- (a) the front page of the preliminary document contains —
 - (i) the following statement:
“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Authority.”;
 - (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and
 - (iii) a statement in bold lettering that no offer or invitation shall be made or received, and no agreement shall be made, on the basis of the preliminary document, to purchase or subscribe for any interests or units of interests in a trust to which the preliminary document relates;
- (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer to the public of interests or units of interests in a trust to which the preliminary document relates, for subscription or purchase, or an invitation to the public to subscribe for or purchase those interests or units of interests in a trust to which the preliminary document relates, or the acceptance of such an offer or invitation by any person; and
- (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting oral or written material, on matters contained in a preliminary document which has been lodged with the Authority, to persons specified in sections [274] and [275] before a prospectus or profile statement is registered by the Authority.

(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority without contravening subsection (1).

(6) Before a prospectus or profile statement is registered, an advertisement or publication does not contravene subsection (1) if it contains only the following:

- (a) a statement that identifies the person making the offer or invitation or intended offer or invitation, and the interests or units of interests in the trust;
- (b) a statement that a prospectus or profile statement for the offer or invitation will be made available when the offer or invitation is made;
- (c) a statement that anyone wishing to acquire the interests or units of interests in the trust, 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.

(7) To satisfy subsection (6), 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).

(8) After a prospectus or profile statement is registered with the Authority, an advertisement or publication does not contravene subsection (1) if it includes —

- (a) a statement that a prospectus or profile statement in respect of the offer or invitation to subscribe for or purchase interests or units of interests in the trust is available for collection at the times and places specified in the statement; and
- (b) a statement that anyone wishing to acquire the interests or units of interests in the trust will need to make an application in the manner set out in the prospectus or profile statement.

(9) An advertisement or publication does not contravene subsection (1) if it —

- (a) consists solely of a notice or report to a securities exchange or futures exchange by the trustee of the trust (including trustee-manager of the business trust) or one of its officers or equivalent persons, about the affairs of that trust;
- (b) consists solely of a notice or report of a general meeting of the unitholders of the trust;
- (c) consists solely of a report about the trust and —
 - (i) does not contain information that materially affects the affairs of the trust other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a report referred to in paragraph (a) or (b); and
 - (ii) does not refer (directly or indirectly) to the offer or invitation;
- (d) is a news report or a genuine comment, in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to —
 - (i) a prospectus or a profile statement that has been lodged with the Authority or information contained in such a prospectus or a profile statement; or
 - (ii) a notice or report referred to in paragraph (a), (b) or (c); or
- (e) is a report about the interests or units of interests in the trust published by someone who is not —
 - (i) the trustee of the trust (including trustee-manager of the business trust);
 - (ii) a director or equivalent person of the trustee of the trust (including trustee-manager of the business trust); (iii) a person who has an interest in the success of the issue or sale of the interests or units of interests in the trust; or
 - (iv) acting at the instigation of, or by arrangement with, any person referred to in subparagraph (i), (ii) or (iii).

(10) A person does not contravene subsection (1) if —

- (a) he publishes any advertisement or publication 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
- (b) he did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

(11) Subsection (9) (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.

(12) Any person who contravenes subsection (1) and, in the case of a corporation, every officer 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 \$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.

(13) This section does not affect any liability that a person has under any other law.

(14) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as may be determined by the Authority.

(15) Any person who contravenes any of the conditions or restrictions imposed under subsection (14) 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.

Persons liable on prospectus or profile statement to inform person making offer or invitation about certain deficiencies

[252.] 282L—(1) A person referred to in section [254] (3) (other than paragraph (a)) shall notify in writing the person making the offer of interests or units of interests in a trust, for subscription or purchase, or the invitation to subscribe for or purchase interests or units of interests in a trust, as soon as practicable, if he becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer or invitation that —

- (a) a statement or matter in the prospectus or the profile statement is false or misleading;
- (b) there is an omission to state any information required to be included in the prospectus under section [243] or there is an omission to state any information required to be included in the profile statement under section [246], as the case may be; or
- (c) a new circumstance —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required to be included in the prospectus under section [243], or required to be included in the profile statement under section [246], as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

and the failure to so notify would have been materially adverse from the point of view of an investor.

(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.

Criminal liability for false or misleading statements

[253.] 282M—(1) Where an offer to the public of interests or units of interests in a trust for subscription or purchase, or an invitation to the public to subscribe for or purchase interests or units of interests in a trust is made in or is accompanied by a prospectus or profile statement and —

- (a) a false or misleading statement or matter is contained in —
 - (i) the prospectus or the profile statement; or
 - (ii) any application form for the interests or units of interests;
- (b) there is an omission to state any information required to be included in the prospectus under section [243] or there is an omission to state any information required to be included in the profile statement under section [246], as the case may be; or

- (c) there is an omission to state a new circumstance that —
- (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required to be included in the prospectus under section [243], or required to be included in the profile statement under section [246], as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,
- the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.
- (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 made the statement without having reasonable grounds for making the statement.
- (3) A person shall not be taken to have contravened subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.
- (4) The persons guilty of the offence are —
- (a) the person making the offer or invitation;
 - (b) each director or equivalent person of the person making the offer or invitation;
 - (c) a person named in the prospectus or the profile statement, with his consent, as a proposed director or equivalent person of the person making the offer or invitation;
 - (d) an underwriter (but not a sub-underwriter) to the issue or sale of the interests or units of interests in the trust, named in the prospectus or the profile statement with his consent;
 - (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, but only in respect of the inclusion of the statement; and
 - (f) any other person who made the false or misleading statement, or omitted to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.
- (5) Where a prospectus relating to any interests or units of interests in a trust 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 \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Civil liability for false or misleading statements

[254.] 282N—(1) Where an offer to the public of interests or units of interests in a trust for subscription or purchase, or an invitation to the public to subscribe for or purchase interests or units of interests in a trust is made in or accompanied by a prospectus or profile statement and —

- (a) a false or misleading statement or matter is contained in —
 - (i) the prospectus or the profile statement; or
 - (ii) any application form for the interests or units of interests;
- (b) there is an omission to state any information required to be included in the prospectus under section [243] or there is an omission to state any information required to be included in the profile statement under section [246], as the case may be; or
- (c) there is an omission to state a new circumstance that —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required by section [243] to be included in the prospectus, or required by section [246] 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 with the Authority,

the persons referred to in subsection (3) shall be liable 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, unless otherwise specified, 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 are —

- (a) the person making the offer or invitation;
- (b) each director or equivalent person of the person making the offer or invitation;
- (c) a person named in the prospectus or the profile statement with his consent as a proposed director or equivalent person of the person making the offer or invitation;
- (d) an underwriter (but not a sub-underwriter) to the issue or sale of the interests or units of interests in the trust, named in the prospectus or the profile statement with his consent;
- (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, but only in respect of the inclusion of that statement; and
- (f) any other person who made the false or misleading statement or omitted to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance.

(4) A person who acquires interests or units of interests in a trust as a result of an offer or invitation that was made in or accompanied by a profile statement is taken to have acquired the interests or units of interests in a trust in reliance on both the profile statement and the prospectus for the offer or invitation.

(5) No action under subsection (1) shall be commenced after the expiration of 6 years from the date on which the cause of action arose.

(6) This section does not affect any liability that a person has under any other law.

Defences

[255.] 2820—(1) A person is not liable under section [253] (1) or [254] (1) only because of a false or misleading statement or matter 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 [253] (1) or [254] (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 [253] (1) or [254] (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) a proposed director or underwriter;
- (b) having made a statement included in the prospectus or the profile statement; or
- (c) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section [253] (1) or [254] (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 [253] (1) or [254] (1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that he was not aware of the matter.

Offer information statement for renounceable rights issues

[256.] 282P—(1) An offer of interests or units of interests in a business trust for subscription or purchase, or an invitation to subscribe for or purchase interests or units of interests in a business trust shall be deemed to be an offer to the public if —

- (a) it is an offer or invitation by means of a rights issue which is renounceable in favour of persons other than existing unitholders of that business trust; and
- (b) an application has been or will be made for permission for the interests or units of interests in the business trust to be listed for quotation on any securities exchange.

(2) Where subsection (1) applies to any offer or invitation, an offer information statement which complies with such form and content as may be prescribed by the Authority shall be lodged with the Authority.

(3) Notwithstanding anything in section [240], that section need not be complied with in relation to an offer or invitation to which subsection (1) applies if subsection (2) has been complied with.

(4) The Authority may, on the application of a company affected by this section, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.

(5) Section [249, 250, 253, 254 and 255] shall, with the necessary modifications, apply in relation to an offer information statement referred to in subsection (2) as they apply in relation to a prospectus.

(6) For the purposes of subsection (5) —

- (a) a reference in section [249] to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment;
- (b) a reference in section [250] to the date of registration of a prospectus shall be read as a reference to the date of lodgment of the offer information statement; and
- (c) a reference in section [253] or [254] to any information or new circumstance required to be included in a prospectus under section [243] shall be read as a reference to any information prescribed under subsection (2).

(7) Where the written consent of an expert to the issue of an offer information statement is required to be given under section [249] (as applied in relation to that statement under subsection (5)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

Document containing offer of interests for sale deemed prospectus

[257.] 282Q—(1) Subsection (2) applies where interests or units of interests in a trust are allotted, or where there is an agreement to allot interests or units of interests in the trust, with a view to all or any of them being offered for sale to the public.

(2) Any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued in connection with the trust and all written laws and rules of law as to the

contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if —

- (a) the interests or units of interests in the trust had been offered to the public; and
- (b) persons accepting the offer in respect of any interests or units of interests in the trust 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.

(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, interests or units of interests in a trust was made with a view to the interests or units of interests being offered for sale to the public if it is shown —

- (a) that an offer of the interests or units of interests 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 paid in respect of the interests or units of interests had not been so received.

(4) 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 or equivalent persons of the trustee of the trust (including the trustee-manager of the business trust).

(5) 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 in respect of the interests or units of interests in the trust to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the interests or units of interests in the trust have been or are to be allotted may be inspected.

(6) Where an offer to which this section relates is made by —

- (a) a corporation, it shall be sufficient if the document referred to in subsection (2) is signed on behalf of the corporation by 2 directors of the corporation, and any such director may sign by his agent authorised in writing;
- (b) a firm, it shall be sufficient if the document referred to in subsection (2) is signed on behalf of the firm by not less than half of the members of the firm, as the case may be, and any such member may sign by his agent authorised in writing.

Application and moneys to be held by company in trust in separate bank account until allotment

[258.] **282R**—(1) All application and other moneys paid prior to allotment by any applicant on account of interests or units of interests in a business trust offered to the public shall, until the allotment of the interests or units of interests in the business trust be held by the trustee-manager of the business trust upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the trustee-manager solely for the purpose of depositing the application and other moneys that are paid by applicants for those interests or units of interests.

(2) There shall be no obligation or duty on any bank with whom any moneys have been deposited under subsection (1) to enquire into or see to the proper application of those moneys so long as the bank acts in good faith.

(3) If default is made in complying with this section, every officer or equivalent person of the trustee-manager of the business trust 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 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.

Allotment of interests where prospectus indicates application to list on securities exchange

[259.] 282S—(1) Where a prospectus states or implies that application has been or will be made for permission for the interests or units of interests in a business trust offered thereby to be listed for quotation on the official list of any securities exchange, and —

- (a) the permission is not applied for in the form required by the securities exchange within 3 days from the date of the 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,

then —

- (i) any allotment whenever made of interests or units of interests made on an application in pursuance of the prospectus shall, subject to subsection (3), be void; and
- (ii) any person who continues to allot such interests or units of interests after the period specified in paragraph (a) or (b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), the trustee-manager of the business trust shall, subject to subsection (3), immediately repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such moneys is not repaid within 14 days after the trustee-manager so becomes liable to repay it then, in addition to the liability of the trustee-manager, the directors or equivalent persons of the trustee-manager 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 interests or units of interests in a business trust —

- (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 Authority may, on the application of the trustee-manager of the business trust made before any interest or unit of interest is purported to be allotted, exempt the allotment of the interests or units of interests from the provisions of this section and the Authority shall give notice of such exemption in the *Gazette*.

(4) A director or equivalent person of the trustee-manager of a business trust 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 interests or units of interests in a business trust 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 interests or units of interests in a business trust 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 interests or units of interests in a business trust 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 trustee-manager, were liable under subsection (2) to repay money received from applicants, and references to the liability of the trustee-manager of a business trust under that subsection were construed accordingly; and

(iii) for the reference in subsection (8) to the trustee-manager and every officer or equivalent person of the trustee-manager 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 moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the trustee-manager may become liable to repay it under subsection (2).

(8) If default is made in complying with subsection (7), the trustee-manager and every officer or equivalent person of the trustee-manager 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 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.

(9) 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 shall be deemed to have been granted by the securities exchange if the directors or equivalent persons of the trustee-manager have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

(10) If any such undertaking referred to in subsection (9) 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 \$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.

(11) A person shall not issue a prospectus inviting persons to subscribe for interests or units of interests in a business trust if it includes —

- (a) a false or misleading statement that permission has been granted for those interests or units of interests to be listed for quotation on the official list of, 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 listing for quotation on the official list of, dealing in or quoting the interests or units of interests 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 from the date of the issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

(12) Any person who contravenes subsection (11) 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.

(13) Where a prospectus contains a statement to the effect that the trust deed of the business trust complies or has 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 trust deed of a business trust to which the prospectus relates to be listed for quotation on the official list of the securities exchange.

Prohibition of allotment unless minimum subscription received

[260.] 282T—(1) No allotment shall be made of any interests or units of interests in a business trust offered to the public unless —

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the interests or units of interests in the business trust so subscribed has been received by the trustee-manager of the business trust,

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 trustee-manager until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall —

- (a) be calculated based on the price of each interest or unit of interest to be offered, as stated in the prospectus for the offer; and
- (b) be reckoned exclusively of any amount payable otherwise than in cash.

(3) Intentionally omitted.

(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 moneys received from applicants for interests or units of interests shall be immediately repaid to them without interest.

(5) If any money referred to in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors or equivalent persons of the trustee-manager of the business trust 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.

(6) An allotment made of any interests or units of interests in a business trust to an applicant in contravention of this section shall be voidable at the option of the applicant which option may be exercised by written notice served on the trustee-manager of the business trust within one month after the date of the allotment and not later, and the allotment shall be so voidable notwithstanding that the business trust is in the course of being wound up.

(7) A trustee-manager of a business trust who contravenes any of the provisions of this section and every director or equivalent person of a trustee-manager who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable in addition to the penalty or punishment for the offence to pay into the trust property of the business trust and compensate the allottee respectively for any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property) or the allottee has sustained or incurred thereby.

(8) No proceedings for the recovery of any compensation under subsection (7) shall be commenced after the expiration of 2 years from the date of the allotment.

(9) Any condition requiring or binding any applicant for interests or units of interests in a business trust to waive compliance with any requirement of this section shall be void.

[261. to 271.] Intentionally omitted.

Subdivision [(4)] — Exemptions

Interpretation of this Subdivision

[272.] 282U In this Subdivision —

- (a) a reference to a recognised securities exchange is a reference to a corporation declared by the Authority, by order in the *Gazette*, as a recognised securities exchange;
- (b) a reference to an offer in respect of interests or units of interests in a trust is a reference to an offer to the public in Singapore of interests or units of interests in a trust; and
- (c) a reference to an invitation in respect of interests or units of interests in a trust is a reference to an invitation to the public in Singapore to subscribe for or purchase interests or units of interests in a trust.

Offer or invitation made under certain circumstances

[273.] 282V —(1) Subdivision (2) of this Division shall not apply to an offer or invitation in respect of interests or units of interests in a trust if —

- (a) it is made in connection with a take-over offer which is in compliance with the Take-over Code;
- (b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or interests in a trust, or some or all of the shares of a particular class in a corporation, or some or all of the interests of a particular class in a trust —
 - (i) to all members of the corporation or unitholders of the trust or all members of the corporation or unitholders of the trust holding shares or interests of that class, as the case may be; or
 - (ii) where the person already holds shares or interests in the trust, to all other members of the corporation or unitholders of the trust, or all other members of the corporation or unitholders of the trust holding shares or interests of that class,

where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs of the country in which the corporation or trust was constituted;

- (c) it is made in connection with a proposed compromise or arrangement between —
 - (i) the trustee of a trust (including a trustee-manager of a business trust) on behalf of the trust, and the creditors of that trustee in its capacity as trustee or a class of the creditors; or
 - (ii) the trustee of a trust (including a trustee-manager of a business trust) on behalf of the trust and the unitholders of the trust or a class of them,

and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country in which the corporation or trust was constituted;

- (d) it is an offer or invitation in respect of interests in a trust that have been previously issued and are listed for quotation or quoted on a securities exchange;
- (e) it is an offer or invitation in respect of units of interests in a trust where —
 - (i) the units of interests have been previously issued and are listed for quotation or quoted on a securities exchange; or
 - (ii) an application has been or will be made for permission for the units of interests to be listed for quotation or quoted on a securities exchange and the interests have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange; or
- (f) it is an offer or invitation in respect of interests or units of interests in a trust made (whether or not in relation to interests or units of interests that have been previously issued) to a qualifying person, where the interests or units of interests are to be held by or for the benefit of the qualifying person in accordance with an employee scheme for the time being in force.

(2) Subsection (1)(f) shall only apply if no selling or promotional expenses are paid or incurred in connection with the employee scheme, other than those incurred for administrative or professional

services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.

(3) For the avoidance of doubt, nothing in subsection (1)(f) shall be construed as making an offer or invitation to a qualifying person in respect of any interests or units of interests in a trust an offer or invitation to the public by reason only that such offer or invitation is made to the qualifying person.

(4) For the purposes of subsections (1)(f) and (3), a person is a qualifying person if he is a bona fide director, former director, consultant, adviser, employee or former employee, where applicable, of the trustee-manager of the trust or a related corporation of that trustee-manager, or if he is the spouse, widow, widower or a child, adopted child or step-child below the age of 18, of such director, former director, employee or former employee.

(5) Where, on the application of any person interested, the Authority declares that circumstances exist whereby —

(a) the cost of providing a prospectus for an offer or invitation in respect of interests or units of interests in a trust outweighs the resulting protection to investors; or

(b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer or invitation in respect of interests or units of interests in a trust,

Subdivisions (2) and (3) of this Division shall not apply to a person making such an offer or invitation to the public for a period of 6 months from the date of the declaration.

(6) The Authority may, on making a declaration under subsection (5), impose such conditions or restrictions on the offer or invitation as it may determine.

(7) A declaration made under subsection (5) shall be final.

(8) Any person who contravenes any of the conditions or restrictions specified in the declaration made under subsection (5) 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.

(9) In subsection (1)(b) and (c), “trust” means --

(a) a trust constituted outside Singapore whose interests or units of interests are not listed for quotation on a securities exchange; or

(b) a trust constituted outside Singapore, whose interests are subject to an offer for the acquisition thereof and the offer referred to in subsection (1)(b) or (c) for those interests is in compliance with the Take-Over Code as though the trust were a company and the Code is applicable to such offer.

Offer or invitation made to certain institutions or persons

[274.] 282W Subdivision (2) of this Division shall not apply to an offer or invitation in respect of interests or units of interests in a trust, whether or not they have been previously issued, made to —

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

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

(c) a finance company licensed under the Finance Companies Act (Cap. 108);

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

- (e) a company registered under the Trust Companies Act (Cap. 336);
- (f) the Government or a statutory body;
- (g) a pension fund or collective investment scheme;
- (h) the holder of a capital markets services licence for —
 - (i) dealing in securities;
 - (ii) fund management;
 - (iii) providing custodial services for securities;
 - (iv) securities financing; or
 - (v) trading in futures contracts;
- (i) a person which carries on the business of dealing in bonds with —
 - (i) accredited investors; or
 - (ii) persons whose business involves the acquisition and the disposal or holding of securities (whether as principal or agent); or
- (j) any other person who has been declared by the Authority as an exempt purchaser or is within a class of persons declared by the Authority as exempt purchasers.

Offer or invitation made to sophisticated investors

[275.] 282X —(1) Subdivision (2) of this Division shall not apply to an offer or invitation in respect of interests or units of interests in a trust, whether or not they have been previously issued, where the offer or invitation is made to a sophisticated investor, if —

- (a) the offer or invitation is not accompanied by an advertisement making an offer or invitation or calling attention to the offer or invitation, or intended offer or invitation; and
- (b) no selling or promotional expenses are paid or incurred in connection with the offer or invitation other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.

(2) In this section —

"advertisement" means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer or invitation in respect of interests or units of interests in a trust, but does not include —

- (i) an information memorandum; or
- (ii) an announcement made by the trustee of a trust (including a trustee-manager of a business trust) where the interests or units of interests of the trust are listed on a securities exchange or a recognised securities exchange pursuant to any requirement of that securities exchange;

"information memorandum" means a document —

- (a) purporting to describe the business and affairs of —
 - (i) the trust whose interests or units of interests are the subject of the offer or invitation;
 - (ii) the person making the offer or invitation; or
 - (iii) both; and

(b) purporting to have been prepared for delivery to and review by sophisticated investors so as to assist them in making an investment decision in respect of the interests or units of interests in the trust which are the subject of the offer or invitation;

"sophisticated investor" means —

- (a) a person who acquires interests or units of interests in a business trust pursuant to the offer or invitation in question, as principal if the aggregate consideration for the acquisition is not less than \$200,000 (or its equivalent in a foreign currency) for each transaction whether such amount is paid for in cash, by exchange of shares or other assets; or
- (b) a person who acquires interests or units of interests in a business trust pursuant to the offer or invitation in question as principal and —
 - (i) whose total net personal assets exceed \$2 million (or its equivalent in a foreign currency) or whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) at the time of the acquisition; or
 - (ii) in the case of a corporation, whose total net assets exceed \$10 million in value (or its equivalent in a foreign currency) as determined by the last audited balance-sheet of the corporation, or (if the corporation is not required to prepare audited accounts) a balance-sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance-sheet, which is a date that is no earlier than 12 months before the date on which the offer or invitation is made to the corporation; or
- (c) an officer of the person making the offer or invitation or a spouse, parent, brother, sister, son or daughter of that officer or of the person making the offer or invitation, if he is an individual.

(3) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires interests or units of interests in a business trust under section [274] or this section for his own account shall be considered an exempt person even though he does not comply with that requirement.

(4) The Authority 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 interests acquired under exemptions in section [274] or [275]

[276.] 282Y —(1) Where interests or units of interests in a business trust initially acquired under an exemption in section [274] or [275], are first sold to any of the persons specified in either of those sections —

- (a) the offer for sale of, or invitation to purchase, those interests or units of interests made to any of those persons shall not be regarded as an offer or invitation to the public in respect of interests or units of interests in a business trust; and
- (b) any subsequent offer for sale of, or invitation to purchase, those interests or units of interests made to any of those persons shall not be regarded as an offer or invitation to the public in respect of interests or units of interests in a business trust.

(2) Where interests or units of interests in a business trust initially acquired pursuant to an exemption in section [274] or [275], are first sold to any person other than those specified in either of those sections, the offer for sale of, or invitation to purchase, those interests or units of interests made to that person shall be regarded as an offer or invitation to the public in respect of interests or units of interests in a business trust, except in a case referred to in subsection (3).

(3) Subsection (2) shall not apply if at least 6 months have elapsed from the date the interests or units of interests in a business trust to which the offer or invitation relates were initially acquired pursuant to the exemption under section [274] or [275].

(4) In a case referred to in subsection (3), any subsequent offer to sell to any person, or invitation to any person to purchase, the interests or units of interests in the business trust after the expiration of the 6-month period shall not require a prospectus, provided that the interests or units of interests in the business trust are not listed for quotation or quoted on a securities exchange or recognised securities exchange.

(5) For the avoidance of doubt, subsections (2) and (3) shall continue to apply to any offer or invitation referred to in subsection (4) if the interests or units of interests in the business trust are not listed for quotation or quoted on a securities exchange or recognised securities exchange.

Securities exchange offer or invitation

[277.] 282Z (1) Where —

(a) an offer or invitation to the public is in respect of interests or units of interests in a business trust which have not been previously issued and are, or are to be, uniform in all respects with interests or units of interests in a business trust previously issued and listed for quotation on a securities exchange; and

(b) an offer information statement which complies with such form and content as may be prescribed by the Authority is lodged with the Authority and the securities exchange,

Subdivision (2) of this Division shall not apply to the offer or invitation for a period of 6 months from the date of lodgment of the offer information statement.

(2) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.

(3) For the purposes of this section —

(a) interests shall be deemed to be uniform in all respects with interests previously issued notwithstanding that they do not carry the same rights to distributions of profits, income or other payments or returns from the trust property of a business trust as the latter during the 12 months immediately following the issue; and

(b) sections [249, 253, 254 and 255] shall, with the necessary modifications, apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(4) For the purposes of subsection (3)(b) —

- (a) a reference in section [249] to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment; and
- (b) a reference in section [253] or [254] to any information or new circumstance required to be included in a prospectus under section [243] shall be read as a reference to any information prescribed under subsection (1)(b).

(5) Where the written consent of an expert to the issue of an offer information statement is required to be given under section [249] (as applied in relation to that statement under subsection (3)(b)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

[278. to 279.] Intentionally omitted.

Revocation of exemption

[281.] **282AA** —(1) Where the Authority considers that a person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section [273(6)], or that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section shall be final and conclusive and there shall be no appeal therefrom.

Transactions under exempted offers or invitations subject to Division 2 of Part XII of Companies Act and Part XII of this Act

[282.] **282BB** For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer or invitation 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 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

Subdivision [(5)] — Debentures

Applicability of provisions relating to Prospectus Requirements

[283.] **282CC** Division 1 of this Part shall, with such modifications and adaptations as are necessary, apply to an offer or invitation to the public to subscribe for or purchase debentures issued by a trustee of a trust (including a trustee-manager of a business trust) on behalf of the trust and have effect accordingly.”