

CONSULTATION PAPER

P004 - 2004  
April 2004

# Annex 2

## Draft Securities and Futures (Amendment) Bill 2004 Comparative Table

MAS

Monetary Authority of Singapore

## COMPARATIVE TABLE OF PROVISIONS

## AMENDMENTS TO THE SECURITIES AND FUTURES ACT

Existing ProvisionProposed Amendment**Interpretation**

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

"~~accredited investor~~" means —

~~(a) an individual whose net personal assets exceed \$5 million or its equivalent in value in foreign currencies; or~~

~~(b) a corporation with net assets exceeding \$10 million in value or its equivalent in value in foreign currencies as determined in accordance with the most recent audited balance sheet of the corporation, or in the case of a corporation which is not required to prepare audited accounts, a balance sheet certified by the corporation to give a true and fair view of the state of affairs of the corporation as at the end of the period to which it relates;~~

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

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

"auditor" means an approved company auditor as defined in section 4 (1) of the Companies Act (Cap. 50);

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

"account information" means information relating to any:-

(a) securities;

(b) positions in securities; or

(c) positions in futures contracts,

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

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

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

### **Existing Provision**

"Authority" means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

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

"business rules" , in relation to an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider or a clearing house, means the rules, regulations, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —

(a) the exchange holding company, securities exchange, futures exchange, recognised trading system provider or clearing house and its members; and

(b) other persons in relation to it,

whether or not those rules, regulations, by-laws or similar body of statements are made by the exchange holding company, securities exchange, futures exchange, recognised trading system provider or clearing house or are contained in its constituent documents, but does not include the listing rules of a securities exchange or recognised trading system provider (which is an overseas securities exchange);

"capital markets products" means any securities, futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements for the purposes of leveraged

### **Proposed Amendment**

### Existing Provision

foreign exchange trading, and such other products as the Authority may prescribe as a capital markets products;

"capital markets services licence" means a licence that is granted by the Authority under section 86 to a person to carry on a business in any regulated activity;



~~"clearing facility" means —~~

~~(a) a facility for the clearing or settlement of —~~

~~(i) transactions in securities traded on a securities market;  
or~~

~~(ii) futures contracts traded on a futures market; or~~

~~(b) such other clearing or settlement facility or class of clearing or settlement facilities as the Authority may, by order, prescribe;~~



~~"clearing house" means any corporation which has been approved by the Authority under section 51 as a clearing house;~~



### Proposed Amendment

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

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

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

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

## Existing Provision

~~“closed end fund” means an arrangement referred to in paragraphs (a) and (b) of the definition of “collective investment scheme” under which units that are exclusively or primarily non-redeemable units are issued;~~

"Code on Collective Investment Schemes" means the Code on Collective Investment Schemes referred to in section 284 which is issued by the Authority under section 321 (1);

"collective investment scheme" means —

(a) an arrangement in respect of any property —

(i) under which —

(A) the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and

(B) the property is managed as a whole by or on behalf of a manager;

(ii) under which the contributions of the participants and the profits or income from which payments are to be made to them are pooled; and

(iii) the purpose or effect, or purported purpose or effect, of which is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —

## Proposed Amendment

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

(A) is a trust;

(B) invests only in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(C) is listed on a securities exchange;

### **Existing Provision**

(A) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or

(B) to receive sums paid out of such profits, income, or other payments or returns; or

(b) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice published in the *Gazette*,

but does not include —

(i) an arrangement operated by a person otherwise than by way of business;

(ii) an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;

(iii) an arrangement under which each of the participants is a related corporation of the manager;

(iv) an arrangement made by or on behalf of a corporation solely for the benefit of persons each of whom is either a bona fide director, former director, consultant, adviser, employee or former employee of that corporation or a related corporation of that corporation, or a spouse,

### **Proposed Amendment**

### **Existing Provision**

widow, widower or a child, adopted child or step-child below the age of 18 of such director, former director, employee or former employee;

(iva) an arrangement made by or on behalf of 2 or more corporations solely for the benefit of persons each of whom is either a bona fide director, former director, consultant, adviser, employee or former employee of any of those corporations or a related corporation of any of those corporations, or a 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;

(v) a franchise;

(vi) an arrangement under which money received by an advocate and solicitor from his client, whether as a stakeholder or otherwise, acting in his professional capacity in the ordinary course of his practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;

(vii) an arrangement made by any co-operative society registered under the Co-operative Societies Act (Cap. 62) in accordance with the objects thereof solely for the benefit of its members;

(viii) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act (Cap. 39);

(ix) an arrangement arising out of a life policy within the

### **Proposed Amendment**

### Existing Provision

meaning of the Insurance Act (Cap. 142);

~~(x) a closed-end fund constituted in Singapore;~~

~~(xi) a closed-end fund constituted outside Singapore and listed on a securities exchange; or~~

(xii) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice published in the *Gazette*;

~~"commodity", in relation to a futures contract, means —~~

~~(a) a financial instrument; or~~

~~(b) gold, all classes of oil or such other item, good, article, service, right or interest, which is the subject of a futures contract, as the Authority may by order prescribe;~~

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

"connected person", in relation to —

(a) an individual, means —

(i) the individual's spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; and

(ii) a firm or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm or corporation, whether such control is exercised individually

### Proposed Amendment

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

“commodity” in relation to a futures contract, means

(a) financial instrument; or

(b) gold;



**Existing Provision**

or jointly; or

(b) a firm or a corporation, means another firm or corporation in which the first-mentioned firm or corporation has control of not less than 20% of the voting power in that other firm or corporation,

and a reference in this Act to a person connected to another person shall be construed accordingly;

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

"customer" , in relation to a holder of a capital markets services licence, means —

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

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

(i) for the sale or purchase of securities;

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

(iii) in connection with leveraged foreign exchange trading,

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

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

**Proposed Amendment**

## Existing Provision

Schedule;

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

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

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

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

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

"entity" includes, without limitation, the government of any state;

~~"exchange holding company" means any corporation which is a holding company of any securities exchange, futures exchange, clearing house or exchange holding company, and that is approved by the Authority under section 29;~~

~~"exempt clearing facility" means a clearing facility in relation to which, or a clearing facility included in a class of clearing facilities, being a class in relation to which, a declaration under section 50 (3) is in force;~~

## Proposed Amendment

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

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

## Existing Provision

~~"exempt market" means a securities market in relation to which, or a securities market included in a class of securities markets, being a class in relation to which, a declaration under section 5 (5) is in force or a futures market in relation to which, or a futures market included in a class of futures markets, being a class in relation to which, a declaration under section 6 (5) is in force;~~

"exempt person" means a person who is exempted under section 99;

"financial instrument" includes any currency, currency index, interest rate instrument, interest rate index, share, share index, stock, stock index, debenture, bond index, a group or groups of such financial instruments, and such other financial instruments as the Authority may by order prescribe;

"financial year" has the same meaning as in section 4 (1) of the Companies Act;

"firm" has the same meaning as in section 2 (1) of the Business Registration Act (Cap. 32);

"foreign company" has the same meaning as in section 4 (1) of the Companies Act;

"foreign exchange trading" has the meaning given to it in the Second Schedule;

"franchise" means a written agreement or arrangement between 2 or more persons by which —

(a) a party (referred to in this definition as the franchisor) to

## Proposed Amendment

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

### **Existing Provision**

the agreement or arrangement (not being a collective investment scheme) authorises or permits another party (referred to in this definition as the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;

(b) the business carried on by the franchisee or the person associated with the franchisee, as the case may be, is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;

(c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee's business;

(d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and

(e) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

"fund management" has the meaning given to it in the Second Schedule;

### **Proposed Amendment**

## Existing Provision

~~"futures contract" means a contract the effect of which is that —~~

~~(a) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time pursuant to terms and conditions set out in the business rules or practices of a futures exchange, recognised trading system provider or futures market; or~~

~~(b) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the business rules or practices of a futures exchange, recognised trading system provider or futures market at which the contract is made;~~

~~and includes a futures option transaction;~~

~~"futures exchange" means a corporation that is approved by the Authority under section 9 as a futures exchange;~~

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

"futures option transaction" means an option on a specified futures contract which is transacted in accordance with the

## Proposed Amendment

"futures contract" –

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

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

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

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

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

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

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

### **Existing Provision**

business rules or practices of a futures exchange, recognised trading system provider or futures market on which the transaction is made;

"holding company" has the same meaning as in section 5 (4) of the Companies Act (Cap. 50);

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

"licence" means a capital markets services licence or representative's licence;

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

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

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

### **Proposed Amendment**

### Existing Provision

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

whether those rules are made —

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

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

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

"member" , except for the purposes of sections 3 and 4 and Parts XI, XIII and XV, means a person who holds membership of any class or description of a securities exchange, futures exchange, recognised trading system provider or clearing house whether or not he holds any share in the share capital of the securities exchange, futures exchange, recognised trading system provider or clearing house;

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

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

"overseas futures exchange" means a person operating a futures market outside Singapore which is regulated by a financial

### Proposed Amendment

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

### Existing Provision

services regulatory authority of a country or territory other than Singapore;

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

~~"participant" means a person who participates in a collective investment scheme by way of owning one or more units in a collective investment scheme;~~

"prescribed written law" means this Act or any of the following written laws:

- (a) Banking Act (Cap. 19);
- (b) Finance Companies Act (Cap. 108);
- (c) Financial Advisers Act (Cap. 110);
- (d) Insurance Act (Cap. 142);
- (e) Monetary Authority of Singapore Act (Cap. 186);
- (f) Money-changing and Remittance Businesses Act (Cap. 187); or
- (g) such other written law as the Authority may by order prescribe;

"principal" , in relation to a representative, means a person whom the representative is in the direct employment of, acting for or by arrangement with, and for whom the representative carries out any

### Proposed Amendment

"participant" means –

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



### Existing Provision

regulated activity;

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

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

"quote" , in relation to securities and a securities market of a securities exchange or recognised trading system provider, means to display or provide, on the securities market of the securities exchange or recognised trading system provider, information concerning the particular prices or particular consideration at which offers or invitations to sell, purchase or exchange issued securities are made on that securities market, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange issued securities;

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

~~"recognised trading system provider" means a person who is recognised by the Authority under section 36 as a recognised trading system provider;~~

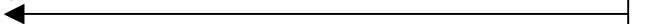
"regulated activity" means an activity specified in the Second Schedule;

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

"representative" , except for the purposes of Part XIII, means a

### Proposed Amendment

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



### Existing Provision

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

"representative's licence" means a licence that is granted by the Authority under section 87 or a temporary representative's licence that is granted by the Authority under section 87A;

"securities" means —

- (a) debentures or stocks issued or proposed to be issued by a government;
- (b) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;
- (c) any right, option or derivative in respect of any such debentures, stocks or shares;
- (d) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
  - (i) the value or price of any such debentures, stocks or shares;

### Proposed Amendment

"responsible person" in relation to a collective investment scheme, means —

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

**Existing Provision**

- (ii) the value or price of any group of any such debentures, stocks or shares; or
- (iii) an index of any such debentures, stocks or shares; or
- (e) any unit in a collective investment scheme,

**Proposed Amendment**

but does not include —

- ~~(i) futures contracts;~~
- (ii) bills of exchange;
- (iii) promissory notes; or
- (iv) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere;

~~"securities exchange" means a corporation that is approved by the Authority under section 9 as a securities exchange;~~

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

"Securities Industry Council" means the Securities Industry Council referred to in section 138;

"securities market" has the meaning given to it in the First Schedule;

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

"subsidiary" has the same meaning as in section 5 of the

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

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

### **Existing Provision**

Companies Act;

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

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

"Take-over Code" means the Singapore Code on Take-overs and Mergers referred to in section 139 which is issued by the Authority under section 321 (1);

"take-over offer" means —

(a) an offer for the acquisition by or on behalf of a person of

—

(i) some or all of the shares in a public company or some or all of the shares of a particular class in a public company, made to all members of the company, or where the person already holds shares in the company, made to all other members of the company; or

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

(b) a proposed compromise or arrangement referred to in section 210 of the Companies Act (Cap. 50) that if executed would result in a change in effective control of the public company concerned within the meaning of the Take-over Code;

### **Proposed Amendment**

### Existing Provision

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



### Proposed Amendment

"transaction information" means information relating to:

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

"unit" , in relation to a collective investment scheme, means a right or interest (however described) of a participant in a collective investment scheme (whether or not constituted as a corporation);

## Existing Provision

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

## Proposed Amendment

"user" means–

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

"user information" means account information, transaction information, or personal particulars –

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

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

## Existing Provision

## Proposed Amendment

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



(2) Any reference in this Act to the affairs of a corporation shall, unless the contrary intention appears, be construed as including a reference to —

(a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owned jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;

(b) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting the generality of paragraph (a)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;

(c) the internal management and proceeding of the corporation;

(d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or

### **Existing Provision**

to or in relation to the corporation or its business or property, at a time when —

- (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;
- (ii) the corporation is under judicial management;
- (iii) a compromise or arrangement referred to in section 210 of the Companies Act (Cap. 50) made between the corporation and another person or other persons is being administered; or
- (iv) the corporation is being wound up,

and without limiting the generality of sub-paragraphs (i) to (iv), any conduct of such a receiver or such a receiver and manager, or such a judicial manager, or any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;

(e) the ownership of shares in, debentures of, units of shares in, units of debentures of, and units in a collective investment scheme issued by the corporation;

(f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;

(g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially to influence the

### **Proposed Amendment**



**Existing Provision**

policy of the corporation;

(h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, units of shares in, units of debentures of, or units in a collective investment scheme issued by, the corporation;

(i) where the corporation has issued units in a collective investment scheme, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the units in a collective investment scheme relate; or

(j) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in paragraphs (a) to (i).

(3) Where the name of a corporation referred to in this Act is changed pursuant to the Companies Act (Cap. 50), the change of name shall not affect the identity of that corporation or the application of the relevant provisions of this Act or any other written law to that corporation.

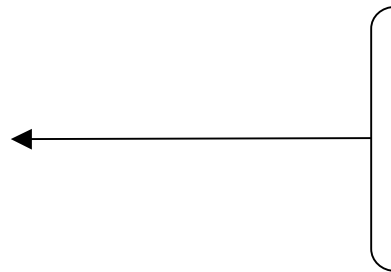
**Proposed Amendment**

**Specific classes of investors**

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

(a) “accredited investor” means –

(i) an individual whose net personal assets exceed \$2 million in value (or its equivalent in a foreign



**Existing Provision**

**Proposed Amendment**

currency) or such other amount as may be prescribed in place of that first amount, or whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) or such other amount as may be prescribed in place of that first amount;

(ii) a corporation with net assets exceeding \$10 million in value (or its equivalent in a foreign currency) or such other amount as may be prescribed in place of that first amount, as determined by –

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

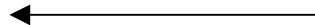
(B) where the corporation is not required to prepare audited accounts regularly, a balance sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance sheet, which is a date within the preceding 12 months;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

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

(b) “expert investor” means –

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

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



## Existing Provision

## Proposed Amendment

(c) “institutional investor” means –

- (i) a bank that is licensed under the Banking Act (Cap. 19);
- (ii) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (iii) a finance company that is licensed under the Finance Companies Act (Cap. 108);
- (iv) a company or society registered under the Insurance Act (Cap. 142) as an insurer;
- (v) a company registered under the Trust Companies Act (Cap. 336);
- (vi) the Government;
- (vii) a statutory body established under any Act in Singapore;
- (viii) a pension fund or collective investment scheme;
- (ix) the holder of a capital markets services licence for -
  - (A) dealing in securities;
  - (B) fund management;
  - (C) providing custodial services for securities;
  - (D) securities financing; or
  - (E) trading in futures contracts;
- (x) a person (other than an individual) who carries on



**Existing Provision**

**Proposed Amendment**

the business of dealing in bonds with accredited investors or expert investors; or

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

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



**Part II**

**MARKETS**

*(Part II of the principal Act is deleted)*

*(To refer to Amendment Bill on the re-enacted Part II)*

**Part III**

**MARKETS**

*(Part III of the principal Act is deleted)*

*(To refer to Amendment Bill on the re-enacted Part III)*

**Part IIIA**

**APPROVED HOLDING COMPANY**

*(To refer to Amendment Bill on the new Part IIIA)*

### Existing Provision

#### Need for representative's licence

**83.** —(1) Subject to subsection (2), no person shall act as a representative in carrying on business in any regulated activity or hold himself out as doing so, [~~unless he is the holder of a representative's licence for that regulated activity.~~] ←

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

~~(a) any person who acts as a representative of an exempt person; and~~

~~(b) any person whom the Authority may exempt from holding a representative's licence in respect of any regulated activity. ] ←~~

### Proposed Amendment

unless —

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

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

- (a) any person who acts as a representative of an exempt person, in so far as —
  - (i) the type and scope of regulated activity carried out by the first-mentioned person are the same as those carried out by the exempt person in that capacity; and
  - (ii) the manner in which the first-mentioned person carries out the regulated activity is the same as the manner in which the exempt person carries out the regulated activity in that capacity;

### Existing Provision

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

### Proposed Amendment

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

## Existing Provision

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

**84.** —(1) An application for the grant or renewal of a licence shall be —

(a) made to the Authority in such form and manner as the Authority may prescribe; and

(b) in the case of an application for renewal of a licence, made not later than one month or such other period as the Authority may prescribe, before the expiry of the licence.

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

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

(4) An application for the grant of a representative's licence in respect of any regulated activity shall be supported in the prescribed manner by such person, who is the holder of or who has applied for a capital markets services licence for that regulated activity, as may be specified by the Authority.

(5) An application for the renewal of a representative's licence in respect of any regulated activity shall be supported in the prescribed manner by such person, who is the holder of a capital markets services licence for that regulated activity, as may be specified by the Authority.

(5A) An application for the grant of a representative's licence in respect of any regulated activity shall be deemed to be withdrawn

## Proposed Amendment

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

### **Existing Provision**

with effect from the date on which the person who supported the application —

- (a) withdraws his support in writing;
  - (b) withdraws his application for a capital markets services licence in respect of that regulated activity; or
  - (c) has his application for a capital markets services licence in respect of that regulated activity refused by the Authority.
- (5B) An application for the renewal of a representative's licence in respect of any regulated activity shall be deemed to be withdrawn with effect from the date on which the person who supported the application withdraws his support in writing.
- (6) Where a person submits an application for renewal of his licence before the expiration of his licence but after the period referred to in subsection (1), the Authority may impose a late renewal fee not exceeding \$100 for every day or part thereof that the renewal is late, subject to a maximum of \$3,000.
- (7) Where a person would be guilty of an offence for not being the holder of a particular licence, no proceedings shall be instituted against him for the offence for the period from the expiry of that licence until that licence is renewed or his application for renewal is withdrawn or refused if before the expiration of that licence he has applied for renewal of that licence and he complies with the requirements of this Act as though he were the holder of that licence.
- (8) In this section, "licence" and "representative's licence" do not include a temporary representative's licence.

### **Proposed Amendment**



## Existing Provision

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

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

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

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

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

(a) the applicant has not provided the Authority with such information relating to it or any person employed by or associated with it for the purposes of its business, and to any circumstances likely to affect its manner of conducting business, as the Authority may require;

(b) the applicant or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(c) execution against the applicant or its substantial shareholder in respect of a judgment debt has been returned

## Proposed Amendment

recognised market operator

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

### **Existing Provision**

unsatisfied in whole or in part;

(d) a receiver, a receiver and manager, judicial manager or an equivalent person has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the applicant or its substantial shareholder;

(e) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

(f) the applicant or its substantial shareholder, or any officer of the applicant —

(i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act;

(g) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform in connection with the holding of the licence;

(h) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its officers, employees and substantial shareholders are fit and proper persons;

(i) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers or

### **Proposed Amendment**

**Existing Provision**

customers having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;

(j) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant’s business is to be conducted;

(k) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;

(l) there are other circumstances which are likely to —  
(i) lead to the improper conduct of business by the applicant, any of its officers, employees or substantial shareholders; or  
(ii) reflect discredit on the manner of conducting the business of the applicant or its substantial shareholders;

(m) the Authority has reason to believe that the applicant, or any of its officers, will not perform the functions for which the applicant seeks to be licensed, efficiently, honestly or fairly; or

or employees

(n) the Authority is of the opinion that it would be contrary to the interests of the public to grant or renew the licence.

(5) Subject to subsection (6), the Authority shall not refuse an application for a grant or renewal of a capital markets services licence without giving the applicant ~~[a right]~~ to be heard.

an opportunity

**Proposed Amendment**

### **Existing Provision**

(6) The Authority may refuse an application for the grant or renewal of a capital markets services licence on any of the following grounds without giving the applicant an opportunity to be heard:

- (a) the applicant 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 applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

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

**87.** —(1) An individual may apply to the Authority in such form and manner as the Authority may prescribe for a representative's licence to act as a representative to carry on business in one or more regulated activities.

(2) In granting a representative's licence, the Authority shall —

- (a) specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate; and
- (b) relate the licence to the holder of a capital markets services licence which supported that application for a representative's licence.

### **Proposed Amendment**

### Existing Provision

### Proposed Amendment

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

(a) the applicant has not provided the Authority with such information relating to him as the Authority may require;

(b) the applicant is an undischarged bankrupt whether in Singapore or elsewhere;

(c) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;

(d) the applicant has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

(e) the applicant —

(i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or

(ii) has been convicted of an offence under this Act;

(f) the Authority is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties he is to perform in connection with the holding of the licence;

(g) the applicant fails to satisfy the Authority that he is a fit and proper person to be licensed;

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

### **Existing Provision**

(h) the Authority has reason to believe that the applicant may not be able to act in the best interests of the subscribers or customers of a holder of a capital markets services licence having regard to his reputation, character, financial integrity and reliability;

(i) the Authority is not satisfied as to the financial standing of the applicant;

(j) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the duties which he may perform in connection with the holding of the licence;

(k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business;

(l) the applicant is in arrears in the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);

(m) the Authority has reason to believe that the applicant will not perform the functions for which he seeks to be licensed, efficiently, honestly or fairly; or

(n) the Authority is of the opinion that it would be contrary to the interests of the public to grant or renew the licence.

(4) Subject to subsection (5), the Authority shall not refuse an application for the grant or renewal of a representative's licence without giving the applicant an opportunity to be heard.

### **Proposed Amendment**

### **Existing Provision**

(5) The Authority may refuse an application for the grant or renewal of a representative's licence on any of the following grounds without giving the applicant an opportunity to be heard:

(a) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) the applicant has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(6) In this section, "representative's licence" does not include a temporary representative's licence.

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

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

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

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

~~[(4) Where the Authority imposes or varies any condition or restriction under this section, the Authority need not give the licensed person an opportunity to be heard.]~~

### **Proposed Amendment**

## Existing Provision

## Proposed Amendment

### **False statements in relation to application for grant, renewal or variation of licence**

**92.** Any person who, in connection with an application for the grant, renewal or variation of a licence —

(a) [~~wilfully~~] makes a statement which is false or misleading in a material particular [~~knowing it to be false or misleading~~];  
or

(b) [~~wilfully~~] omits to state any matter or thing without which the application is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 [~~or to imprisonment for a term not exceeding 12 months or to both~~].

without reasonable excuse,

### **Lapsing, revocation and suspension of licence**

**95.** —(1) A licence shall lapse —

(a) in the case of a holder of a capital markets services licence, if the holder is wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) in the case of a holder of a representative's licence, if the representative dies; and

(c) in the event of such other occurrence or in such other circumstances as may be prescribed.

(2) The Authority may revoke a licence —



### Existing Provision

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

~~[(i) there exists a ground on which the Authority may refuse an application under section 86; ]~~ ←

(ii) it fails or ceases to carry on the business in all the regulated activities for which it was licensed;

(iii) the Authority has reason to believe that the holder of the capital markets services licence, or any of its officers or employees, has not performed its duties efficiently, honestly or fairly; ~~[or ]~~

(iv) the holder of the capital markets services licence contravenes any condition or restriction applicable in respect of its licence, any direction issued to it by the Authority under this Act, or any other provision in this Act; ~~[and ]~~ ←

(b) in the case of a representative, if —

~~[(i) there exists a ground on which the Authority may refuse an application under section 87 or 87A (as the case may be); ]~~ ←

(ii) he fails or ceases to act as a representative in carrying on business in all the regulated activities for which he was licensed;

(iii) the licence of his principal is revoked;

### Proposed Amendment

(i) any event has occurred that would have entitled the Authority to refuse an application under section 86, if such an application is made after the occurrence of the event;

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

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

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

### Existing Provision

(iv) the Authority has reason to believe that he has not performed his duties efficiently, honestly or fairly; [∅]

### Proposed Amendment

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

[(+)] he contravenes any condition or restriction applicable in respect of his licence, any direction issued to him by the Authority under this Act or any other provision in this Act-

(vi)

or

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

(3) The Authority may, if it considers it desirable to do so —

(a) suspend a licence for a specific period instead of revoking it under subsection (2); and

(b) at any time extend or revoke the suspension.

(4) Subject to subsection (5), the Authority shall not revoke or suspend a licence under subsection (2) or (3) without giving the licensed person an opportunity to be heard.

(5) The Authority may revoke or suspend a licence without giving the licensed person an opportunity to be heard —

(a) in the case of a capital markets services licence, on any of the following grounds:

(i) the licensed person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

### **Existing Provision**

(ii) 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 licensed person;

(iii) the licensed person has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or

(b) in the case of a representative's licence, on any of the following grounds:

(i) the licensed person is an undischarged bankrupt, whether in Singapore or elsewhere;

(ii) the licensed person has been convicted, whether in Singapore or elsewhere, of an offence —

(A) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(B) punishable with imprisonment for a term of 3 months or more.

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

(7) The Authority shall not issue an order under subsection (6) without giving the licensed person an opportunity to be heard.

(8) Where the Authority has revoked or suspended a capital markets

### **Proposed Amendment**

### **Existing Provision**

services licence or issued a prohibition order to a holder of a capital markets services licence, that holder shall —

(a) in the case of a revocation of its licence, immediately inform all its representatives by notice in writing of such revocation and the representatives who are so informed shall cease to act as representatives of that holder;

(b) in the case of a suspension of its licence, immediately inform all its representatives by notice in writing of such suspension and the representatives who are so informed shall cease to act as representatives of that holder during the period of the suspension; and

(c) in the case of a prohibition order, immediately inform all its representatives who perform the regulated activity or activities to which the prohibition order relates, by notice in writing of such prohibition order and the representatives who are so informed shall cease to perform such regulated activity or activities during the period specified in the prohibition order.

(9) Any licensed person who —

(a) performs a regulated activity while its licence has lapsed or has been revoked or suspended, or in breach of a prohibition order; or

(b) contravenes subsection (8),

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

(10) A lapsing, revocation, suspension or expiry of a licence of a

### **Proposed Amendment**

### **Existing Provision**

person or the issue of a prohibition order shall not operate so as to

—

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or lapsing of the licence or the issue of the prohibition order, as the case may be; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

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

**96.** —(1) No holder of a capital markets services licence shall appoint a person as —

- (a) its chief executive officer;
- (b) its director where, upon appointment, the person resides or is to reside in Singapore, whether or not he is directly responsible for its business in Singapore or any part thereof; or
- (c) its director where, upon appointment, the person is directly responsible for its business in Singapore or any part thereof, whether he resides or is to reside in Singapore or elsewhere,

unless it has obtained the approval of the Authority.

(1A) Where a holder of a capital markets services licence has obtained the approval of the Authority to appoint a person as its

### **Proposed Amendment**

### **Existing Provision**

chief executive officer or director under subsection (1), the person may be re-appointed as chief executive officer or director, as the case may be, of the holder immediately upon the expiry of the earlier term without the approval of the Authority.

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not refuse an application for approval under subsection (1) without giving the holder of the capital markets services licence an opportunity to be heard.

(4) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the holder of a capital markets services licence an opportunity to be heard:

(a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority refuses an application for approval under

### **Proposed Amendment**

### Existing Provision

subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

~~[(6) In this section, “chief executive officer” means any person, by whatever name described, who is —~~

~~(a) in the direct employment of, or acting for, or by arrangement with a holder of a capital markets services licence; and~~

~~(b) principally responsible for the management and conduct of any type of business of the holder in Singapore. ]~~

### Proposed Amendment

#### **Removal of officer of holder of capital markets services licence**

**97.** —(1) Where the Authority is satisfied that an officer of a holder of a capital markets services licence —

(a) has wilfully contravened or wilfully caused that holder to contravene this Act;

(b) has without reasonable [~~justification or~~] excuse failed to enforce compliance with this Act;

(c) has failed to discharge the duties or functions of his office;

(d) is an undischarged bankrupt whether in Singapore or elsewhere;

(e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;

(f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a

### Existing Provision

compromise or scheme of arrangement that is still in operation; or

(g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

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

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

(3) Subject to subsection (4), the Authority shall not direct a holder of a capital markets services licence to remove from office or employment an officer under this section without giving that holder [~~a right~~] to be heard.

an opportunity

(4) The Authority may direct a holder of a capital markets services licence to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the holder an opportunity to be heard:

(a) the officer is an undischarged bankrupt, whether in Singapore or

### Proposed Amendment



### **Existing Provision**

elsewhere;

(b) the officer has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs a holder of a capital markets services licence to remove from office or employment an officer under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) No criminal or civil liability shall be incurred by —

(a) a holder of a capital markets services licence; or

(b) any person acting on behalf of the holder of a capital markets services licence,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

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

**99.** —(1) The following persons shall be exempted in respect of the following regulated activities from the requirement to hold a capital markets services licence to carry on business in such regulated activities:

(a) any bank licensed under the Banking Act (Cap. 19) in respect of

### **Proposed Amendment**

### Existing Provision

any regulated activity;

(b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of any regulated activity which it is approved to carry out under that Act;

(c) any finance company licensed under the Finance Companies Act (Cap. 108) in respect of any regulated activity that is not prohibited by that Act or for which an exemption from section 25 (2) of that Act has been granted;

(d) any company or society registered under the Insurance Act (Cap. 142) in respect of fund management for the purpose of carrying out insurance business;

~~[(e) any person licensed under the Financial Advisers Act (Cap. 110) in respect of any regulated activity that is solely incidental to his carrying on of the business for which he is licensed under that Act;]~~

~~(f) [any securities exchange, futures exchange[ or recognised trading system provider] in respect of any regulated activity that is solely incidental to its operation of a securities market or futures market, as the case may be;]~~

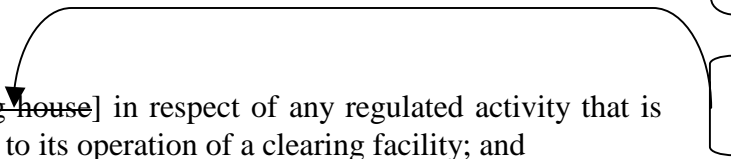
(g) any ~~[clearing house]~~ in respect of any regulated activity that is solely incidental to its operation of a clearing facility; and

(h) such other person or class of persons in respect of any regulated activity as may be exempted by the Authority.

### Proposed Amendment

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

designated clearing house



### Existing Provision

~~(2) Any securities exchange, futures exchange or [recognised trading system provider] which intends to carry on business in any regulated activity but which does not fall within subsection (1) (f), may apply in writing to the Authority for exemption from the requirement to hold a capital markets services licence and the Authority may grant such exemption if in the Authority's opinion, the carrying on of the activities referred to in subsection (1) is not a significant business of the securities exchange, futures exchange or recognised trading system provider.~~

~~(3) Without prejudice to section 341, the Authority may prescribe the criteria or factors that it will consider in deciding whether to grant an exemption under subsection (2).~~

(4) The Authority may by regulations or by notice in writing impose such conditions or restrictions on an exempt person or its representative in relation to the conduct of the regulated activity or any related matter as the Authority thinks fit and the exempt person or its representative, as the case may be, shall comply with such conditions or restrictions.

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

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

### Proposed Amendment

### **Existing Provision**

(a) if it contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (4);

(b) if it contravenes any direction issued to it under section 101 (1);  
or

(c) if the Authority considers that it is carrying on business in a manner that is, in the opinion of the Authority, contrary to the public interest.

(7) Where the Authority withdraws an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(8) A withdrawal under subsection (6) of an exemption granted to any person shall not operate so as to —

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

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

(9) A person that is aggrieved by a decision of the Authority made under subsection (6) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

### **Proposed Amendment**

## Existing Provision

## Proposed Amendment

### **Penalties under this Division**

**103.** A holder of a capital markets services licence which, without reasonable [~~justification or~~] excuse, contravenes section 102 (1), (3) or (4) or any regulation made under section 102 (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

### **Penalties under this Division**

**105.** Any holder of a capital markets services licence which, without reasonable [~~justification or~~] excuse, contravenes section 104 (1) or any regulation made under section 104 (2), shall be guilty of an offence and shall be liable on conviction —

(a) where it is found to have committed the offence with intent to defraud, to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction; or

(b) in any other case, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which

### Existing Provision

the offence continues after conviction.

### Proposed Amendment

#### **Power of auditors appointed by Authority**

**110.** —(1) An auditor appointed by the Authority under section 109 may, for the purpose of carrying out an examination and audit of the books of a holder of a capital markets services licence —

(a) examine, on oath or affirmation, any officer, employee or agent of the holder or any other auditor appointed under this Act in relation to those books;

(b) require any officer, employee or agent of the holder, or any other auditor appointed under this Act, to produce any of the books held by or on behalf of the holder relating to its business, and to make copies of or take extracts from, or retain possession of, such books for such period as is necessary to enable them to be inspected;

(c) require a securities exchange, futures exchange or ~~clearing house~~ to produce any of the books kept by it, or any information in its possession, relating to the business of the holder;

designated clearing house

(d) employ such persons as he considers necessary to assist him in carrying out the examination and audit; and

(e) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could do as an auditor under this subsection, other than the examination of any person on oath or affirmation.

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request

**Existing Provision**

made to him, by an auditor appointed under section 109 or a person authorised under subsection (1) (e), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

**Proposed Amendment**

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

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

designated clearing house

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

**Issue of contract notes**

**118.** The holder of a capital markets services licence to deal in securities, trade in futures contracts or carry out leveraged foreign exchange trading shall, in respect of a sale or purchase of securities or futures contracts or a transaction connected with leveraged foreign exchange trading, after entering into the transaction —

(1)

- (a) give to the other party to the transaction a contract note which contains such information as may be prescribed; or
- (b) procure that such a contract note be given in its name.

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

## Existing Provision

## Proposed Amendment

### ~~[Restrictions on granting unsecured advances, loans or credit facilities to officers, etc., of holder of capital markets services licence~~

~~119.—(1) The holder of a capital markets services licence shall not give any unsecured advance, unsecured loan or unsecured credit facility to any of its officers or employees or to a person who, to its knowledge, is a person associated with or connected to any of its officers or employees, if—~~

~~(a) the unsecured advance, unsecured loan or unsecured credit facility is given for the purpose of enabling or assisting the person to whom the credit is given to purchase, subscribe for or trade in any capital markets products; or~~

~~(b) the holder knows or has reason to believe that the unsecured advance, unsecured loan or unsecured credit facility will be used for the purpose of purchasing, subscribing for or trading in any capital markets products.~~

~~(2) Subsection (1) is without prejudice to section 162 of the Companies Act (Cap. 50).]~~



## Existing Provision

~~**120. — (1) Where the holder of a capital markets services licence, or a representative of such a holder, sends a circular or other similar written communication in which the holder or representative makes a recommendation, whether expressly or by implication, with respect to any securities, the holder or representative shall include in the circular or other written communication, in type not less legible than that used in the remainder of the circular or other written communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of, the securities that he, or a person associated with or connected to him, has at the date on which the circular or other written communication is sent.**~~

~~**(2) Where a person is charged with an offence in respect of a contravention of subsection (1), it shall be a defence for the defendant to prove that, at the time at which the circular or other written communication was sent, he was not aware and could not reasonably be expected to have been aware that —**~~

~~(a) he had an interest in, or an interest in the acquisition or disposal of, those securities; or~~

~~(b) the person associated with or connected to him had an interest in, or an interest in the acquisition or disposal of, those securities,~~

~~as the case may be.~~

## Proposed Amendment

### Disclosure of certain interest in respect of underwriting agreement

**120. —(1) Where –**

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

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

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

unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an

### Existing Provision

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

~~(a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will or is likely to, accrue directly or indirectly to the person, upon or arising out of the disposal of the securities; or~~ ←

~~(b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities.~~

~~(4) For the purposes of subsections (1) and (2) and notwithstanding sections 2 and 3, a person is not associated with or connected to another person unless the person and the other person are acting jointly, or otherwise acting under or in accordance with an arrangement made between them, in relation to the sending of the circular or other written communication or the making of the recommendation.~~

~~(5) Where —~~

~~(a) a person has subscribed for or purchased securities for the purpose of offering all or any of them to the public for purchase; and~~

~~(b) the person offers any of those securities for purchase,~~

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

### Proposed Amendment

underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

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

### Existing Provision

~~(6) Where—~~

~~(a) securities have been offered for subscription or purchase; and~~

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

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

~~(i) make an offer to sell those securities otherwise than in the ordinary course of trading on a securities exchange or recognised trading system provider; or~~

~~(ii) make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to those securities;~~

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

~~(8) When the holder of a capital markets services licence, or a representative of such a holder, sends to a person a circular or other written communication, written offer or written recommendation to which subsection (1), (5) or (6) applies, the holder or representative~~

### Proposed Amendment

### Existing Provision

shall preserve a copy of the circular or other written communication, offer or recommendation for 6 years.

(9) For the purpose of this section, any reference to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

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

(11) The Authority may, if it is in the public interest, exempt any person or class of persons, or securities or class of securities from the application of this section.

(12) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.]

### [Recommendations by licensed person

**121.**— (1) The holder of a capital markets services licence, or a representative of such a holder, shall not make a recommendation with respect to any capital markets products to a person who may reasonably be expected to rely on the recommendation if the holder or representative does not have a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), the holder of a capital

### Proposed Amendment

### Existing Provision

~~markets services licence, or a representative of such a holder, does not have a reasonable basis for making a recommendation to a person unless—~~

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

~~(b) the recommendation is based on the consideration and investigation referred to in paragraph (a).~~

~~(3) The holder of a capital markets services licence, or a representative of such a holder, who contravenes subsection (1) shall not be guilty of an offence under subsection (1) or under section 335.~~

~~(4) Where—~~

~~(a) the holder of a capital markets services licence, or a representative of such a holder, in making a recommendation to a person, contravenes subsection (1);~~

~~(b) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;~~

~~(c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, in~~

### Proposed Amendment

### Existing Provision

~~reliance on the recommendation; and~~

~~(d) the person suffers loss or damage as a result of doing that act or refraining from doing that act, as the case may be,~~

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

~~(5) Subsection (4) is in addition to and not in derogation of any other remedies available to the person referred to in that subsection.~~

~~(6) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether orally or in writing and whether expressly or by implication.]~~

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

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

(a) the holder of a capital markets services licence to deal in securities or trade in futures contracts when acting as principal or on behalf of a person associated with or connected to the holder; or

(b) a representative of such a holder when acting for his own account or on behalf of a person associated with or connected to the representative,

shall not enter into a transaction for the purchase or sale of securities or futures contracts that are permitted to be traded on the securities market of a securities exchange, the futures market of a futures exchange or the securities market ~~or the futures market of a [recognised trading system provider]~~, as the case may be, if a

recognised market operator

### Proposed Amendment

### Existing Provision

customer of that holder or representative, who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, securities or futures contracts of the same class and he has not complied with the instruction.

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

~~(a) his customer required the purchase or sale of securities or futures contracts on behalf of the customer to be effected only on specified conditions and he has been unable to purchase or sell the securities or futures contracts by reason of those conditions; or~~

~~(b) the transaction is entered into in prescribed circumstances.]~~

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

### **Penalties under this Division**

**124.** Any person who, without reasonable [justification or] excuse, contravenes any of the provisions of this Division (except section

### Proposed Amendment

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

### Existing Provision

121), shall be guilty of an offence and shall be liable on conviction, where no penalty is expressly provided, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

### **Dealings as principal**

**125.** —(1) Subject to subsection (4), the holder of a capital markets services licence to deal in securities shall not, as principal, enter into any transaction of sale or purchase of any securities with any customer who is not the holder of a capital markets services licence to deal in securities unless the holder first informs the customer that the holder is acting in the transaction as principal and not as agent.

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

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

(5) Where the holder of a capital markets services licence to deal in securities fails to comply with subsection (1) or (2) in respect of a

### Proposed Amendment

recognised market operator



### **Existing Provision**

contract for the sale of securities by the holder, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission given in writing to the holder not later than 30 days after the receipt of the contract note.

(6) Where the holder of a capital markets services licence fails to comply with subsection (1) or (2) in respect of a contract for the purchase of securities by the holder, the vendor of the securities may, in like manner, rescind the contract.

(7) Nothing in subsection (5) or (6) shall affect any right that a person has apart from those subsections.

(8) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(9) For the purposes of this section —

(a) a reference to the holder of a capital markets services licence to deal in securities entering into a transaction of sale or purchase of securities as principal includes a reference to the holder entering into such a transaction on behalf of —

- (i) a person associated with or connected to the holder;
  - (ii) a corporation in which the holder has a controlling interest; or
  - (iii) a corporation in which the holder's interest and the interests of the directors of the holder together constitute a controlling interest;
- and

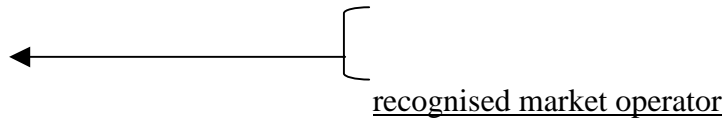
(b) a reference to securities is a reference to securities which are permitted to be traded on the securities market of —

### **Proposed Amendment**

**Existing Provision**

**Proposed Amendment**

- (i) a securities exchange;
- (ii) an overseas securities exchange; or
- (iii) a [~~recognised trading system provider~~].

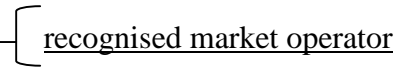


**Trading against customer**

**126.** The holder of a capital markets services licence to trade in futures contracts shall not knowingly enter into a transaction to buy from or sell to its customer any futures contract for —

- (a) the holder’s own account;
- (b) an account of a person associated with or connected to it; or
- (c) an account in which the holder has an interest,

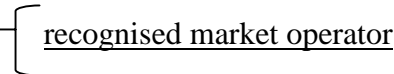
except with the customer’s prior consent and in accordance with the business rules and practices of a futures exchange or [~~recognised trading system provider~~].



**Cross-trading**

**127.** The holder of a capital markets services licence to trade in futures contracts shall not knowingly fill or execute a customer’s order for the purchase or sale of a futures contract on a futures market by off-setting against the order or orders of any other person, without effecting such a purchase or sale either —

- (a) on the trading floor or electronic futures trading system; or
- (b) in accordance with the business rules and practices of a futures exchange or [~~recognised trading system provider~~].



**Existing Provision**

**Proposed Amendment**

**Application of this Division**

**130.** —(1) This Division shall apply to any relevant person.

(2) In this Division —

(a) “relevant person” means —

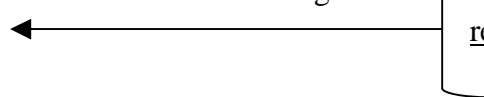
(i) a holder of a capital markets services licence to deal in securities and a representative of such a holder;

(ii) a holder of a capital markets services licence to advise on corporate finance and a representative of such a holder; or

(iii) a holder of a capital markets services licence for fund management and a representative of such a holder; and

(b) a reference to securities is a reference to securities which are listed for quotation, or quoted, on a securities exchange or [~~recognised trading system provider~~].

recognised market operator



## Existing Provision

## Proposed Amendment

### **Offences under this Subdivision**

**162.** —(1) A person who, without reasonable ~~justification or~~ excuse, refuses or fails to comply with section 154 or 156 (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who, without reasonable excuse —

(a) refuses or fails to take an oath or make an affirmation when required to do so by an investigator examining him under this Subdivision;

(b) refuses or fails to comply with a requirement of an investigator under section 158 (2) (a); or

(c) refuses or fails to comply with section 159 (2) or 160,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) A person who, in purported compliance with the provisions of this Subdivision, or in the course of examination of the person, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) It shall be a defence to a prosecution for an offence under subsection (3) if the defendant proves that he believed on reasonable grounds that the information or statement was true and

### Existing Provision

was not misleading.

(5) A person who, without reasonable ~~justification~~ or excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Subdivision shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

### **Offences under this Part**

**168.** —(1) A person who, without reasonable ~~justification~~ or excuse, refuses or fails to comply with any requirement imposed under section 163, 165 (7) or 166 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

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

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

(4) Any person, who conceals, destroys, mutilates or alters any book relating to a matter that the Authority is investigating or about to investigate under this Division or who, where such a book is within

### Proposed Amendment

### Existing Provision

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

(5) A person who, without reasonable ~~justification~~ or excuse, obstructs or hinders the Authority in the exercise of any power under this Subdivision, or obstructs or hinders a person who is executing a warrant issued under section 164, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) The occupier or the person in charge of the premises that a person enters under a warrant issued under section 164 who fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

### **Continuous disclosure**

**203.** —(1) This section shall apply to —

(a) a corporation which is admitted to the official list of a securities exchange; or

(b) a responsible person of a collective investment scheme the units of which are quoted on a securities exchange,

if the corporation or responsible person is required by the ~~listing~~

### Proposed Amendment

securities exchange under the listing rules and any other requirements of the securities exchange

### Existing Provision

~~rules of the securities exchange~~ to notify the securities exchange of information on specified events or matters as they occur or arise for the purpose of the securities exchange making that information available to a securities market operated by the securities exchange.

(2) The corporation or responsible person must not intentionally, recklessly or negligently fail to notify the securities exchange of such information as is required to be disclosed ~~under the listing rules of the securities exchange~~.

(3) Notwithstanding section 204, a contravention of subsection (2) shall not be an offence unless the failure to notify is intentional or reckless.

~~(4) In this section, “responsible person” has the same meaning as in Division 2 of Part XIII.~~

### Proposed Amendment

by the securities exchange under the listing rules or any other requirement of the securities exchange

### **Exception for underwriters**

**223.** —(1) Sections 218 (2) and 219 (2) shall not apply in respect of

subscribing for, or purchasing, securities

(a) ~~subscribing for securities~~ under an underwriting agreement or a sub-underwriting agreement;

(b) entering into an agreement referred to in paragraph (a); or

(c) selling securities ~~subscribed for under~~ an agreement referred to in paragraph (a).

subscribed for, or purchased, under

(2) Sections 218 (3) and 219 (3) shall not apply in respect of the communication of information in relation to securities —

(a) to a person solely for the purpose of procuring the person

### Existing Provision

to enter into an underwriting agreement in relation to any such securities; or

(b) by a person who may be required under an underwriting agreement to ~~subscribe for~~ any such securities if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:

- (i) enter into a sub-underwriting agreement in relation to any such securities;
- (ii) subscribe for any such securities.

### Proposed Amendment

subscribe for, or purchase,

### **Civil penalty**

**232.** —(1) Whenever it appears to the Authority that any person has contravened any provision in this Part, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which resulted in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum —

- (a) not exceeding 3 times —
    - (i) the amount of the profit that the person gained; or
    - (ii) the amount of the loss that he avoided,
- as a result of the contravention; or



### **Existing Provision**

(b) equal to \$50,000 if the person is not a corporation, or \$100,000 if the person is a corporation,

whichever is the greater.

(3) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which did not result in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(4) Notwithstanding subsections (2) and (3), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of a contravention of a provision in this Part and the order may be made on such terms as may be agreed between the Authority and the defendant.

(5) Nothing in this section shall be construed to prevent the Authority from entering into an agreement with any person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) or (3) for a contravention of any provision in this Part.

(6) A civil penalty imposed under this section shall be payable to the Authority.

(7) If the person fails to pay the civil penalty imposed on him within the time specified in the court order referred to in subsection (4) or specified under the agreement referred to in subsection (5), the Authority may ~~sue for and~~ recover the civil penalty as though the

### **Proposed Amendment**

**Existing Provision**

civil penalty were a judgment debt due to the Authority.

(8) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, shall also be available to a defendant to an action under this section in respect of that contravention.

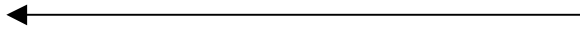
**Proposed Amendment**

**Existing Provision**

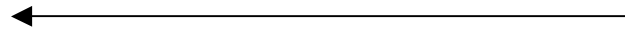
**Proposed Amendment**

**Preliminary provisions**

239. —(1) In this Division —



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



"debenture" includes debenture stock, bonds, notes and any other debt securities issued by a corporation or any other entity, whether or not constituting a charge on the assets of the issuer but does not include —

- (a) a cheque, letter of credit, order for the payment of money or bill of exchange;
- (b) subject to the regulations made under this Act, a promissory note having a face value of not less than

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

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

### Existing Provision

\$100,000 and having a maturity period of not more than 12 months; or

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



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



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



~~"minimum subscription" in relation to any shares, debentures, or units of shares or debentures offered to the public for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which in the opinion of the directors must be raised by the issue of the shares, debentures, or units of shares or debentures so offered;~~



### Proposed Amendment

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

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

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

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

**Existing Provision**

**Proposed Amendment**

"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, shares in or debentures of, or units of shares in or debentures of, a corporation~~ to be issued or sold and which contains the information required to be included in a prospectus under section 243, except for such information as may be prescribed by the Authority;

number of securities.

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

"promoter", in relation to a prospectus issued by or in connection with ~~a corporation, means a promoter of the corporation~~ 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;

an entity, means a promoter of the entity

"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 shares in or debentures of, or any units of shares in or debentures of, a corporation or proposed corporation,~~ and includes any document deemed to be a prospectus under section 257, but does not include —

other document used to make an offer of securities

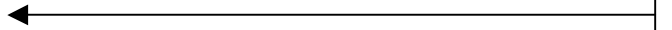
(a) a profile statement; or

(b) any material, advertisement or publication which is

### Existing Provision

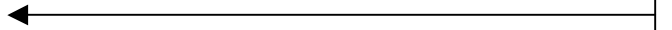
authorised by section 251 (other than subsection (5));

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

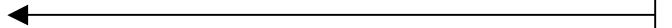


"statutory meeting" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

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



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



(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.

### Proposed Amendment

“securities” means debentures or units of debentures of an entity, or shares or units of shares of a corporation;

“underlying entity”, in relation to an offer of securities, means the entity (not being the issuer) whose securities underlie the offer;

(1A) For the purposes of this Division, “recognised securities exchange” means a corporation declared by the Authority, by order in the Gazette, as a recognised securities exchange for the purposes of this Division.

## Existing Provision

(3) For the purposes of this Division—

~~(a) any invitation to the public to deposit money with or to lend money to a corporation or other entity (not being a prescribed corporation) shall be deemed to be an offer to the public for subscription or purchase, or invitation to the public to subscribe for or purchase, debentures of the corporation or entity; and~~ ←

~~(b) any document that is issued or intended or required to be issued by a corporation or other entity (not being a prescribed corporation) acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the corporation or entity in respect of any money that is or may be deposited with or lent to the corporation or other entity in response to such an invitation shall be deemed to be a debenture.~~

## Proposed Amendment

(3) For the purposes of this Division –

(a) any invitation to a person to deposit money with or to lend money to an entity shall be deemed to be an offer of debentures of the entity; and

(b) any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation shall be deemed to be a debenture.

(3A) Notwithstanding subsection (3) –

(a) any invitation to a person by a prescribed entity to make a deposit with the prescribed entity is not an offer of debentures; and

(b) the following documents issued or intended or required to be issued by a prescribed entity are not debentures:

(i) any certificate of deposit;

(ii) any other document acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the prescribed entity in respect of any deposit that is or may be made with the prescribed entity.

### Existing Provision

(4) ~~In subsection (3), “prescribed corporation” means —~~

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

(5) The Authority may, at any time by notice in writing, vary or revoke any condition or restriction imposed under subsection (4) (b).

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

- ~~(a) include a reference to —~~
  - ~~(i) making an offer of shares in or debentures of, or units of shares in or debentures of, a corporation 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 shares in or debentures of, or units of shares in or debentures of, a corporation, as the case may be,~~

### Proposed Amendment

(4) In subsection (3A) –

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

“prescribed entity” means –

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

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

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



### Existing Provision

~~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 shares in or debentures of, or units of shares in or debentures of, a corporation; 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 shares in or debentures of, or units of shares in or debentures of, a corporation;~~

~~(b) but does not include the following:~~

~~(i) an offer or invitation to enter into an underwriting agreement relating to shares in or debentures of, or units of shares in or debentures of, a corporation;~~

~~(ii) an offer or invitation made to existing members or debenture holders of a corporation (whether or not it is renounceable in favour of persons other than existing members or debenture holders) which —~~

~~(A) relates to shares in or debentures of that corporation, or to units of such shares or debentures; and~~

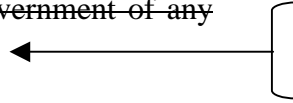
~~(B) is not an offer or invitation to which section 256 applies; and~~

~~(iii) an offer made to existing members of a company under section 306 of the Companies Act (Cap. 50) which relates to shares, or units of shares, in the company.~~

### Proposed Amendment

**Existing Provision**

~~(7) Any reference in the Division to the debentures of a corporation shall include a reference to debentures of the government of any state or any other entity.~~



**Proposed Amendment**

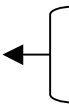
(7) For the purpose of subsection (6), “sale” includes any disposal for valuable consideration.

(8) This Division applies only in relation to offers or invitations to the public to subscribe for or purchase shares, debentures, or units of shares or debentures, made on or after the commencement of this Division.

**Authority may disapply this Division to certain offers and invitations**

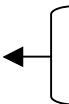
**239A.** Notwithstanding any provision to the contrary in this Division, where —

~~(a) an offer to the public of, or an invitation to the public to subscribe for or purchase, shares, debentures or units of shares or debentures is one to which (but for this section) both this Division and Division 2 apply; and~~



offer of securities

~~(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,~~



that offer or a class of offers to which that offer belongs

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

## Existing Provision

### Requirement for prospectus and profile statement, where relevant

**240.** —(1) No person shall make ~~an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation unless such offer or invitation —~~

(a) is made in or accompanied by a prospectus in respect of the offer ~~or invitation —~~

(i) that is prepared in accordance with section 243;

~~(ii) a copy of which, being one that has been signed by every director, and by every person who is named therein as a proposed director, of the corporation or by a person authorised by him, is lodged with the Authority together with a written application for the registration of the prospectus; and~~

(iii) that is registered by the Authority; and

(b) 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.

## Proposed Amendment

an offer of securities unless the offer

(ii) a copy of which, being one that has been signed in accordance with subsection (4A), is lodged with the Authority; and

### Existing Provision

(4) ~~Notwithstanding subsection (1), an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation, 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 section 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, and by every person who is named therein as a proposed director, of the corporation 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.~~

### Proposed Amendment

offer of securities

(b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (4A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;

## Existing Provision

## Proposed Amendment

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

(a) where the person making the offer is the entity which issued the securities to which the offer relates –

(i) in a case where that entity is not the government of a State, by every director or equivalent person of that entity and every person who is named therein as a proposed director or equivalent person of that entity; or

(ii) in a case where that entity is the government of a State, by an official of that government who is authorized to sign the prospectus on its behalf;

(b) where the person making the offer is an individual and the entity which issued the securities to which the offer relates –

(i) is not the government of a State --

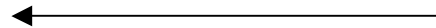
(A) by that person; and

(B) by every director or equivalent person of that entity and every person who is named therein as a proposed director or equivalent person of that entity;

(ii) is the government of a State, by that person;

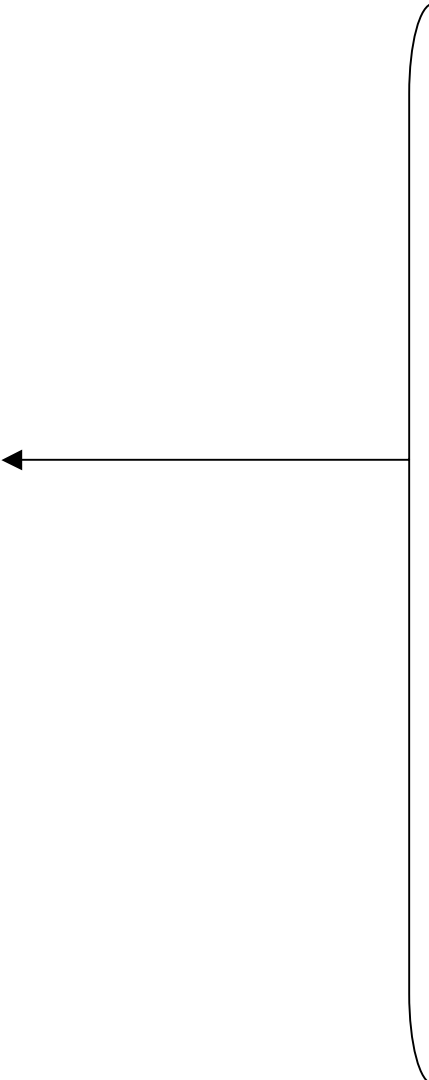
(c) where the person making the offer is an entity (not being the government of a State) and is not the entity which issued the securities to which the offer relates-

(i) in a case where the second-mentioned entity is not the government of a State –



**Existing Provision**

**Proposed Amendment**

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

**Existing Provision**

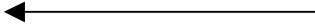
**Proposed Amendment**

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



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

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



~~(6) Subsection (1) shall not apply to an offer or invitation in respect of shares in or debentures of, or units of shares in or debentures of, a corporation 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.

### Existing Provision

~~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.~~

### Proposed Amendment

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

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

(b) the Authority gives notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (15);

(c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends —

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (15); or

(d) the person making the offer gives notice in writing to the Authority to withdraw the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.



**Existing Provision**

**Proposed Amendment**

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

(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~~ which has been signed in accordance with subsection (4A) and which contains the information required to be stipulated in the prospectus under section 243, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been ~~furnished to~~ lodged with the Authority.

← (9A) A person making an offer may lodge any amendment to a prospectus or profile statement, where applicable, in respect of that offer at any time before but not after the registration of the prospectus or profile statement by the Authority.

(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

### Existing Provision

(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 —

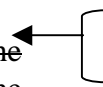
(a) a prospectus or profile statement lodged with the Authority under this section; and

(b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A (1),

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 and, where applicable, the

### Proposed Amendment

the person making the offer



**Existing Provision**

translation 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, and by every person who is named therein as a proposed director of the corporation, 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.

**Proposed Amendment**

a prospectus

(c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (4A);

(e) any written consent of an expert required by section 249 to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(ea) any written consent of an issue manager required by section 249A(1) to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(eb) any written consent of an underwriter required by section 249A(2) to the issue of the prospectus or, where applicable, the profile statement, or a copy thereof which is verified as prescribed, is not lodged with the Authority; or

**Existing Provision**

**Proposed Amendment**

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

a profile statement

(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, and by every person who is named therein as a proposed director of the corporation, or by a person authorised by the director or proposed director in writing, is not lodged with the Authority;~~

(c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (4A);

(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.

### Existing Provision

~~(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 corporation is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;~~

~~(b) Deleted by Act 16/2003, wef 22/12/2003.~~

~~(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 corporation.~~

~~(d) Deleted by Act 16/2003 wef 22/12/2003.~~

~~(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.~~

### Proposed Amendment

(15) The Authority shall not refuse to register a prospectus under subsection (13) or a profile statement under subsection (14) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

(a) the person making the offer (being an entity) or the issuer is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;

(b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

(c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity) or the issuer.”

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

### Existing Provision

(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 shares or debentures, or units of shares or debentures is accepted, or shares or debentures, or units of shares or debentures are allotted, issued or sold, without a copy of a prospectus and profile statement, where applicable, in respect of the shares or debentures, or units of shares or debentures, having been registered by the Authority,~~

~~the corporation 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 shares or debentures, or units of shares or debentures; or~~

~~(iii) the allotment, issue or sale of the shares or debentures, or units of shares or debentures,~~

~~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.~~

### Proposed Amendment

(17) If—

(a) a prospectus or profile statement is issued, circulated or distributed without it having been registered by the Authority; or

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

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

(i) the issue, circulation or distribution of the prospectus or profile statement,

(ii) the acceptance of the application to subscribe for or purchase the securities; or

(iii) the allotment, issue or sale of the securities,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day thereof during which the offence continues after conviction.

### Existing Provision

~~(18) Every corporation 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 corporation 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 corporation 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 members and creditors of the corporation 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

### Proposed Amendment

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

#### Debenture issuance programme

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

- (a) a base prospectus applicable to every offer under the debenture issuance programme; and
- (b) a pricing statement applicable to that particular offer.

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

## Existing Provision

## Proposed Amendment

same date or different dates or as a single document.

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

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

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

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

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

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

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





### Existing Provision

#### **Lodging supplementary document or replacement document**

**241.** —(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 shares, debentures, or units of shares or debentures~~ 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

### Proposed Amendment

close of the offer of securities, the person making that offer

### Existing Provision

this section as a supplementary or replacement document, as the case may be), with the Authority.

### Proposed Amendment

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

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

(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

### Existing Provision

prospectus or profile statement it supplements and any previous supplementary document.

- (3) At the beginning of a replacement document, there shall be —
- (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
  - (b) an identification of the prospectus or profile statement it replaces.
- (4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.
- ~~(5) The person who lodges a supplementary document or the corporation concerned shall take reasonable steps to inform 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.

### Proposed Amendment

- (5) The person making the offer shall take reasonable steps to –
- (a) inform potential investors of the lodgment of any supplementary or replacement document under subsection (1); and
  - (b) make available to them the supplementary document or replacement document.”

### Existing Provision

~~(6A) The person who lodges a replacement document or the corporation concerned 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 shares, debentures, or units of shares or debentures and —~~

~~(a) where the shares, debentures, or units of shares or debentures have not been issued to the applicants, the corporation 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~~

### Proposed Amendment

(8) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for securities, then —

(a) where the securities have not been issued to the applicants, the person making the offer shall —

(i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to

### Existing Provision

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 corporation 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 shares or debentures, or units of shares or debentures; or~~

(b) ~~where the shares, debentures, or units of shares or debentures have been issued to the applicants, the corporation 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 to the corporation shares or debentures, or units of shares or debentures, which they do not wish to retain title in; or~~

(ii) ~~treat the issue of the shares or debentures, or units of shares or debentures as void, in which case the issue shall be deemed void and the corporation 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 shares or debentures, or units of shares or debentures.~~

### Proposed Amendment

withdraw their applications;

(ii) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or

(iii) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled, and the person making the offer shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or

(b) where the securities have been issued to the applicants, the person making the offer shall —

(i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in;

(ii) within 7 days from the date of lodgment of the

**Existing Provision**

**Proposed Amendment**

supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in; or

(iii) treat the issue of the securities as void, in which case the issue shall be deemed void and the person making the offer shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities.

(9) Subsections (8) (b) and (11) have effect notwithstanding sections 73, 76 and 76A of the Companies Act (Cap. 50).

(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 corporation of this, ~~whereupon the corporation shall, within 7 days from the receipt of such notification, pay to him all moneys paid by him on account of his application for the shares, debentures or units of shares or debentures.~~

subsection (8)(a)(i) or (ii)

whereupon the person making the offer shall, within 7 days from the receipt of such notification, pay to him all moneys paid by him on account of his application for the securities.

~~(11) An applicant who wishes to exercise his option under subsection (8) (b) (i) to return shares, debentures or units of shares or debentures issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement~~

(11) An applicant who wishes to exercise his option under subsection (8)(b)(i) or (ii) to return securities issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to be evidence of title to those

### Existing Provision

~~document, notify the corporation of this and return all documents, if any, purporting to be evidence of title to those shares or debentures, or units of shares or debentures, to the corporation, whereupon the corporation shall, within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for the shares, debentures or units of shares or debentures and the issue of those shares or debentures, or units of shares or debentures, 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 shares or debentures, or units of shares or debentures and —~~

~~(a) where the shares or debentures, or units of shares or debentures have not been sold to the applicants, the corporation 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 corporation 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 shares~~

### Proposed Amendment

securities to the person making the offer, whereupon the person making the offer shall, within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for the securities and the issue of those securities shall be deemed to be void.

(12) Where prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase securities then –

(a) where the securities have not been transferred to the applicants, the person making the offer shall –

(i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications;

(ii) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or

(iii) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have

### Existing Provision

~~or debentures, or units of shares or debentures; or~~

~~(b) where the shares or debentures, or units of shares or debentures, have been sold to the applicants, the corporation 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 to the corporation shares or debentures, or units of shares or debentures, which they do not wish to retain title in; or~~

~~(ii) treat the sale of the shares or debentures, or units of shares or debentures as void, in which case the sale shall be deemed void and the corporation 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 corporation 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 shares, debentures or units of shares or debentures.~~

### Proposed Amendment

been withdrawn and cancelled, and the person making the offer shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or

(b) where the securities have been transferred to the applicants, the person making the offer shall —

(i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in;

(ii) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in; or

(iii) treat the sale of the securities as void, in which case the sale shall be deemed void and the person making the offer shall —



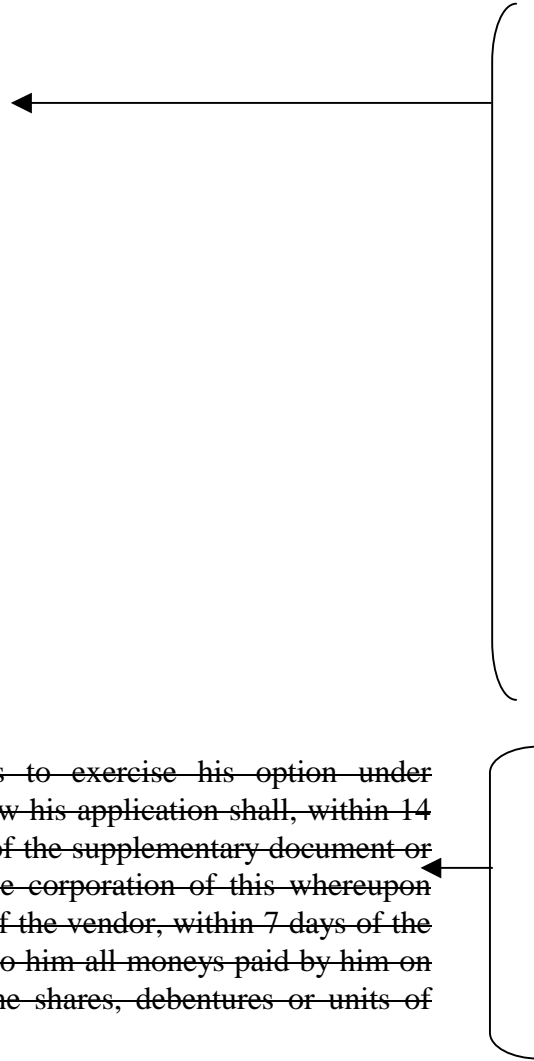
**Existing Provision**

**Proposed Amendment**

- (A) if documents purporting to evidence title have been issued to the applicants –
- (ZA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return such documents to the person making the offer within 14 days from that date; and
- (ZB) within 7 days from the date of the receipt of those documents or the date of the lodgment of the supplementary document or replacement document, whichever is later, pay to the applicants all moneys paid by them for the securities; or
- (B) if no such documents have been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document pay to the applicants all moneys paid by them for the securities.

~~(13) An applicant who wishes to exercise his option under subsection (12) (a) (i) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the corporation of this whereupon the corporation 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 shares, debentures or units of shares or debentures.~~

(13) An applicant who wishes to exercise his option under subsection (12)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this whereupon the person making the offer shall, within 7 days of the receipt of such notification, pay to him all moneys paid by him on account of his application for the securities.



### Existing Provision

~~(14) An applicant who wishes to exercise his option under subsection (12) (b) (i) to return shares, debentures or units of shares or debentures sold to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the corporation of this and return all documents, if any, purporting to evidence title to those shares or debentures, or units of shares or debentures, to the corporation, whereupon the corporation 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 shares, debentures or units of shares or debentures and the sale of those shares, debentures, or units of shares or debentures 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.

### Proposed Amendment

(14) An applicant who wishes to exercise his option under subsection (12)(b)(i) or (ii) to return securities sold to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to evidence title to those securities to the person making the offer, whereupon the person making the offer shall within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for the securities and the sale of the securities shall be deemed to be void.

## Existing Provision

## Proposed Amendment

### Stop order for prospectus and profile statement

242. —(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;
- (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 shares or debentures, or units of shares or debentures to which the prospectus relates be allotted, issued or sold.

person making the offer direct that no or no further securities

(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;
- (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or

## Existing Provision

(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 shares or debentures, or units of shares or debentures~~ 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 shares or debentures or units of shares or debentures~~ 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 in the public interest to do so on the basis of any of the following circumstances:

~~(a) the corporation whose shares or debentures, or units of shares or debentures are the subject of the offer or invitation to which the prospectus or profile statement relates 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 that ~~corporation~~.

## Proposed Amendment

person making the offer direct that no or no further securities

the securities

person making the offer

(a) the person making the offer (being an entity) or the issuer is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;

(aa) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

the person making the offer (being an entity) or the issuer

### Existing Provision

~~(5) Where applications to subscribe for shares, debentures or units of shares or debentures to which the prospectus or profile statement relates have been made prior to the stop order, and —~~

~~(a) where the shares or debentures, or units of shares or debentures have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the corporation 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 shares, debentures or units of shares or debentures; or~~

~~(b) where the shares or debentures, or units of shares or debentures, have been issued to the applicants, the issue of the shares or debentures, or units of shares or debentures, shall be deemed to be void and the corporation shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the shares, debentures, or units of shares or debentures.~~

(6) Subsection (5) (b) has effect notwithstanding sections 73, 76 and 76A of the Companies Act (Cap. 50).

~~(7) Where applications to purchase shares, debentures or units of shares or debentures to which the prospectus or profile statement relates have been made prior to the stop order, and —~~

~~(a) where the shares or debentures, or units of shares or debentures have not been sold to the applicants, the applications shall be deemed to have been withdrawn and~~

### Proposed Amendment

(5) Where applications to subscribe for securities to which the prospectus or profile statement relates have been made prior to the stop order, and —

(a) where the securities have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or

(b) where the securities have been issued to the applicants, the issue of the securities shall be deemed to be void and the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities.

(7) Where applications to purchase securities to which the prospectus or profile statement relates have been made prior to the stop order, then —

(a) where the securities have not been transferred to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or

### Existing Provision

~~cancelled and the corporation 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 shares or debentures, or units of shares or debentures; or~~

~~(b) where the shares or debentures, or units of shares or debentures have been sold to the applicants, the sale shall be deemed to be void and the corporation 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 corporation 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 shares, debentures or units of shares or debentures.~~

(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 shares in or debentures of, or units of shares in or debentures of, a corporation to which the prospectus or profile statement relates be allotted, issued or sold.~~

### Proposed Amendment

(b) where the securities have been transferred to the applicants, the sale shall be deemed to be void and the person making the offer shall -

(i) if documents purporting to evidence title have been issued to the applicants -

(A) within 7 days from the date of the stop order, inform all applicants to return such documents to the person making the offer within 14 days from that date; and

(B) within 7 days from the date of the receipt of those documents or the date of the stop order, whichever is later, pay to the applicants all moneys paid by them for the securities; or

(ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities.

the person making the offer directing that no or no further securities

### **Existing Provision**

(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.

### **Proposed Amendment**

## Existing Provision

### Contents of prospectus

**243.** —(1) A prospectus for ~~an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or for an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation~~ 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.

## Proposed Amendment

an offer of securities



### Existing Provision

~~(3) The matters referred to in subsection (1) (a) shall relate to—~~

~~(a) the rights and liabilities attaching to the shares or debentures, or units of the shares or debentures;~~

~~(b) the assets and liabilities, profits and losses, financial position and performance, and prospects of the corporation that is to issue or has issued the shares or debentures, or units of the shares or debentures;~~

~~(c) if the person making the offer or invitation is one who controls the corporation whose shares or debentures underlie the offer or invitation, the assets and liabilities, profits and losses, financial position and performance, and prospects of that corporation; and~~

~~(d) in the case of options over shares or debentures, the capacity of the person making the offer or invitation to issue or deliver the relevant shares or debentures.~~

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

(a) the ~~nature of the shares or debentures, or units of the shares or debentures, and the nature of the corporation concerned;~~

(b) the matters that likely investors may reasonably be expected to know; and

(c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.

### Proposed Amendment

(3) The matters referred to in subsection (1)(a) shall relate to –

the rights and liabilities attaching to the securities;

(b) the assets and liabilities, profits and losses, financial position and performance, and prospects of the issuer;

(c) if the person making the offer is one who controls the underlying entity, the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; and

(d) in the case of options over securities, the capacity of the person making the offer to issue or deliver the relevant securities.”;

nature of the securities and the nature of the entity

### Existing Provision

(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;~~ ←
- ~~(c) a proposed director of the corporation whose shares or debentures, or units of shares or debentures, will be issued under the offer or invitation;~~
- (d) a person named in the prospectus as an underwriter of the issue or sale;
- (e) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;
- (f) a person named in the prospectus with his consent as having made a statement —
  - (i) that is included in the prospectus; or
  - (ii) on which a statement made in the prospectus is based;
- (g) a person named in the prospectus with his consent as having performed a particular professional or advisory function.

(6) A condition requiring or binding an applicant for ~~shares in or debentures of, or units of shares in or debentures of, a corporation~~ ← to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

### Proposed Amendment

- (a) the person making the offer;
- (b) if the person making the offer is an entity, a director or equivalent person of the entity;
- (c) a director or equivalent person or a proposed director or equivalent person of the issuer; and

securities

**Existing Provision**

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

244. Deleted by Act 16/2003 wef 22/12/2003.

**Retention of over-subscriptions and statement of asset-backing in debenture issues**

245. —(1) ~~A corporation or other entity~~ shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the ~~corporation or entity~~ has specified in the prospectus —

(a) that it expressly reserves the right to accept or retain over-subscriptions; and

(b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

(2) Subject to regulations made by the Authority for the purposes of this subsection, where ~~a corporation or other entity~~ specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions —

(a) ~~the corporation or entity~~ shall not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the

**Proposed Amendment**

An entity

an entity

an entity

**Existing Provision**

total tangible assets and the total liabilities of ~~the corporation or entity~~ and of its guarantor corporations; and

(b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of ~~the corporation or entity~~ would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

(3) Every ~~corporation or other~~ entity or other person that contravenes subsection (2) 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.

**Contents of profile statement**

**246.** —(1) A profile statement for an ~~offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation~~ shall contain —

(a) ~~the following particulars:~~

~~(i) identification of the corporation and the nature of the shares or debentures, or units of shares or debentures, in respect of which the offer or invitation is made to the public;~~

~~(ii) the nature of the risks involved in investing in the~~

**Proposed Amendment**

an entity

an entity

(1) or

offer of securities

(a) the following particulars:

(i) identification of the person making the offer and where the person making the offer is not the issuer, the issuer and, where applicable, the underlying entity ;

(ii) the nature of the securities;

(iii) the nature of the risks involved in investing in the

### **Existing Provision**

~~shares or debentures, or units of shares or debentures; and  
(iii) details of all amounts payable in respect of the shares or debentures, or units of shares or debentures (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 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.** —(1) 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.

### **Proposed Amendment**

securities; and

(iv) details of all amounts payable in respect of the securities (including any amount by way of fee, commission or charge);

### **Existing Provision**

(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 profile statement, subject to such conditions or restrictions as may be determined by the Authority.

(4) *Deleted by Act 16 of 2003, wef 22/12/2003.*

(5) 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.

(6) *Deleted by Act 16/2003, wef 22/12/2003.*

### **Proposed Amendment**

### Existing Provision

#### **Exemption for certain governmental and international corporations as regards signing of copy of prospectus or profile statement by all directors**

**248.** —(1) This section shall apply only to corporations that are both of a governmental and international character.

(2) A corporation to which this section applies may ~~apply in writing to the Authority for an exemption from the requirements of section 240 (1) (a) (ii), (4)(b), (13) (c) and (14) (c) and the Authority may, if it considers those requirements unduly burdensome on the corporation, exempt such corporation from complying therewith.~~

(3) The Authority may subject such exemption to a requirement that such minimum number of directors who are resident in Singapore as the Authority may, in that case, decide must sign the copy of the prospectus or profile statement.

(4) In the event that no director is resident in Singapore, the Authority may permit a duly authorised agent to sign the prospectus or profile statement so long as such authorisation is supported by a resolution of the board of the corporation.

(5) The Authority may, if satisfied that a particular corporation cannot comply with any of the requirements in subsection (3) or (4), grant the exemption applied for.

(6) Any prospectus or profile statement that complies with the terms of exemption granted by the Authority shall be deemed to be a prospectus or profile statement for the purposes of this Division and a copy of such prospectus or profile statement shall be

### Proposed Amendment

(4A)

**Existing Provision**

registered by the Authority.

**Expert’s consent to issue of prospectus containing statement by him**

**249.** —(1) A prospectus ~~making an offer of, or inviting subscription for or purchase of, shares in or debentures of, or units of shares in or debentures of, a corporation 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.~~

**Proposed Amendment**

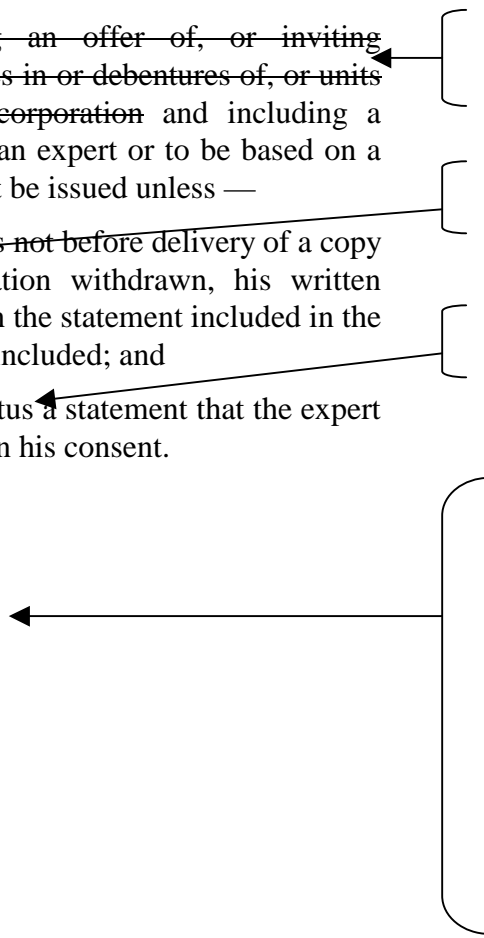
or profile statement making an offer of securities

or profile statement

or profile statement

(1A) Every person making the offer shall cause a true copy of every written consent referred to in subsection (1) to be deposited within 7 days after registration of the prospectus at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(1B) Every issuer shall keep the original copy of every written consent deposited in accordance with subsection (1A), for a period of at least 6 months after the registration of the prospectus, to be made available for inspection by its members and creditors, and persons who have subscribed for or purchased the securities to which the prospectus relates without payment of a fee.





## Existing Provision

(2) If any prospectus is issued in contravention of subsection (1), the ~~corporation~~ and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

## Proposed Amendment

person making the offer

### Consent of issue manager and underwriter to being named in the prospectus

249A (1) A prospectus or profile statement making an offer of securities which names a person as the issue manager to that offer shall not be issued unless -

(a) that person has given, and has not before delivery of a copy of the prospectus or profile statement for registration withdrawn, his written consent to being named in the

## Existing Provision

## Proposed Amendment

prospectus or profile statement as issue manager to that offer ; and

(b) there appears in the prospectus or profile statement a statement that that person has given and has not withdrawn such consent.

(2) A prospectus or profile statement making an offer of securities which names a person as the underwriter to the offer shall not be issued unless –

(a) that person has given, and has not before delivery of a copy of the prospectus or profile statement for registration withdrawn, his written consent to being named in the prospectus or profile statement? as underwriter to that offer; and

(b) there appears in the prospectus or profile statement a statement that that person has given and has not withdrawn such consent.

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

(4) Every person making the offer shall cause a true copy of every written consent referred to in subsection (1) and (2) to be

## Existing Provision

## Proposed Amendment

deposited within 7 days after registration of the prospectus or profile statement at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(5) Every issuer shall keep the original copy of every written consent deposited in accordance with subsection (4), for a period of at least 6 months after the registration of the prospectus or profile statement, to be made available for inspection by its members and creditors and persons who have subscribed for or purchased the securities to which the prospectus relates without payment of a fee.

### **Duration of validity of prospectus**

~~250. —(1) No person shall —~~

~~(a) make an offer to the public of shares or debentures, or units of shares or debentures for subscription or purchase;~~

~~(b) make an invitation to the public to subscribe for or purchase shares or debentures, or units of shares or debentures; or~~

~~(c) allot, issue or sell to the public shares or debentures, or units of shares or debentures,~~

~~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 promoter of a corporation or proposed~~

(1) No person shall make an offer of securities, or allot, issue or sell any securities, and in a case where the person making the offer is a corporation or the securities are those of a corporation or proposed corporation, no officer or promoter of the corporation or proposed corporation shall authorize or permit the offer of the securities, or the allotment, issue or sale of the securities, on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (2).“(2) The period under subsection (1) is--

(a) in a case where the securities are debentures issued under a debenture issuance programme, 12 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale;

### Existing Provision

~~corporation shall authorise or permit the making of—~~

~~(a) an offer to the public of shares or debentures, or units of shares or debentures for subscription or purchase;~~

~~(b) an invitation to the public to subscribe for or purchase shares or debentures, or units of shares or debentures; or~~

~~(c) an allotment, issue or sale to the public of shares or debentures, or units of shares or debentures,~~

~~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 and, in the case of a corporation or proposed corporation, every officer or promoter of the corporation or proposed corporation 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 shares or debentures, or units of shares or debentures 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.~~

### Proposed Amendment

(b) in any other case, 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

(4) An allotment, issue or sale of securities that is made in contravention of subsection (1) shall not, by reason only of that fact, be voidable or void.

**Existing Provision**

**Proposed Amendment**

**Restrictions on advertisements, etc.**

**251.** —(1) If a prospectus is required for an ~~offer or invitation, or intended offer or invitation, of shares in or debentures of, or units of shares in or debentures of, a corporation to the public for subscription or purchase,~~ a person shall not —

offer of securities

- (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 shares or debentures, or units of shares or debentures,~~

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 shares or debentures, or units of shares or debentures; or~~
- ~~(b) is reasonably likely to induce persons to subscribe for or purchase shares or debentures, or units of shares or debentures,~~

- (a) indirectly refers to an offer or intended offer of securities; or
- (b) is reasonably likely to induce persons to subscribe for or purchase securities,

regard shall be had to whether the statement —

**Existing Provision**

(i) forms part of the normal advertising of a corporation's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services;

(ii) communicates information that materially deals with

(iii) the affairs of the corporation; and

(iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(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

(iv) a statement in bold lettering that no offer

**Proposed Amendment**

entity

entity

to institutional investors, persons specified in section 275(1) and persons to whom an offer referred to in section 275(1A) is made

**Existing Provision**

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 shares or debentures, or units of shares or debentures,~~ 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 shares, debentures, or units of shares or debentures, to which the preliminary document relates, for subscription or purchase, or an invitation to the public to subscribe for or purchase those shares, debentures, or units of shares or debentures, 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).

**Proposed Amendment**

any securities

(b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the securities to which the preliminary document relates, or the acceptance of such an offer by any person;”

to institutional investors, persons specified in section 275(1) and persons to whom an offer referred to in section 275(1A) is made

under section 240

## Existing Provision

(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 shares or debentures, or units of shares or debentures;~~

~~(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 shares or debentures, or units of shares or debentures, will need to make an application in the manner set out in the prospectus or profile statement; and~~

(d) a statement of how to arrange to receive a copy of the prospectus or profile statement.

(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 shares or debentures, or units of shares or debentures, is~~

## Proposed Amendment

(a) a statement that identifies the person making the offer or intended offer, and the securities;

(b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;

(c) a statement that anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus or profile statement;

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

(a) it includes a statement that the prospectus or profile statement in respect of the offer of securities is available for collection at the times and places specified in the statement;



### Existing Provision

~~available for collection at the times and places specified in the statement; and~~

~~(b) a statement that anyone wishing to acquire the shares or debentures, or units of shares or debentures, 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 corporation or one of its officers, about its affairs;~~

~~(b) consists solely of a notice or report of a general meeting of the corporation;~~

~~(c) consists solely of a report about the corporation that is published by the corporation and —~~

~~(i) does not contain information that materially affects the affairs of the corporation 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;~~

~~(e) is a news report or a genuine comment, in a newspaper, periodical or magazine or on radio or television, or any other~~

### Proposed Amendment

(b) it includes a statement that anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus or profile statement; and

(c) it does not contain any information that is not included in the prospectus or profile statement.”;

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

(a) consists solely of—

(i) a notice or report to a securities exchange, futures exchange or recognized securities exchange; or

(ii) a disclosure or publication required under this Act or any listing rules of such securities exchange, futures exchange or recognized securities exchange,

made by any person, about its affairs;

(b) consists solely of a notice or report of a general meeting of the person making the offer, the issuer, the underlying entity or any corporation;

(c) consists solely of a report about the issuer or the underlying entity that is published by the person making the offer, the issuer or the underlying entity, and -

### Existing Provision

means of broadcasting or communication, relating to

~~(d)~~

~~(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 shares in or debentures of, or units of shares in or debentures of, the corporation published by someone who is not~~

~~(i) the corporation;~~

~~(ii) a director of the corporation;~~

~~(iii) a person who has an interest in the success of the issue or sale of the shares or debentures, or units of shares or debentures; or~~

~~(iv) acting at the instigation of, or by arrangement with, any person referred to in sub paragraph (i), (ii) or (iii).~~

### Proposed Amendment

(i) does not contain information that materially affects the affairs of the issuer or underlying entity other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a report referred to in paragraph (a) or (b); and

(ii) does not refer (directly or indirectly) to the offer;

(d) is a news report or a genuine comment, in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to-

(i) a prospectus or a profile statement that has been lodged with the Authority or information contained in such a prospectus or a profile statement; or

(ii) a notice or report referred to in paragraph (a), (b) or (c);

(e) is a report about the securities which are the subject of the offer, published by someone who is not -

(i) the person making the offer, the issuer or the underlying entity;

(ii) a director of the person making the

## Existing Provision

## Proposed Amendment

offer, the issuer or the underlying entity;

(iii) a person who has an interest in the success of the issue or sale of the securities; or

(iv) acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);

(f) is a report on the securities which are the subject of the offer, published and delivered to any institutional investor not later than 14 days prior to the date of lodgment of the prospectus, provided that—

(i) the offer is made in one or more other countries;

(ii) the publication and delivery of such report in that other country or any one of those other countries do not infringe any law, code or other requirement of that country; and

(iii) the report and the manner of its publication and delivery in Singapore comply with such other requirements as may be prescribed by the Authority.

(g) is a publication made by the person making the offer,

**Existing Provision**



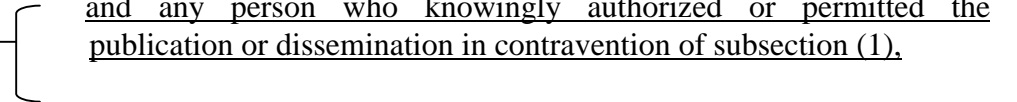
**Proposed Amendment**

the issuer or the underlying entity solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in a publication referred to in paragraph (d) or a publication (which is not an advertisement) referred to in subsection (10), provided that the publication does not contain any information that is not included in the prospectus.

- (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



### Existing Provision

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

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

### Proposed Amendment

offer of securities, as soon as practicable, if he becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer

### Existing Provision

(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.** —(1) Where an ~~offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation is made in or is accompanied by a prospectus or profile statement and —~~

### Proposed Amendment

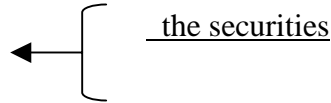
offer of securities is made in or is accompanied by a prospectus or profile statement or, in the case of an offer referred to in section 280, a prospectus or profile statement is prepared and issued in relation to the offer

**Existing Provision**

**Proposed Amendment**

(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 shares or debentures, or units of shares or debentures;~~



(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.

## Existing Provision

(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) if the offer or invitation is made by a corporation, each director of the corporation;~~

~~(c) if the offer or invitation is made by a corporation, a person named in the prospectus or the profile statement, with his consent, as a proposed director of the corporation;~~

~~(d) an underwriter (but not a sub-underwriter) to the issue or sale of the shares or debentures, or units of shares or debentures, 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~~

## Proposed Amendment

(a) the person making the offer;

(b) if the offer is made by an entity, each director or equivalent person of the entity;

(c) if the offer is made by an entity, a person named in the prospectus or the profile statement, with his consent, as a proposed director or equivalent person of the entity;

(d) an issue manager to the offer of the securities, named in the prospectus or the profile statement with his consent if —

(i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;

(ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, he



### Existing Provision

~~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.~~

### Proposed Amendment

fails to take such remedial action as is appropriate in the circumstances without delay; or

(iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;

(e) an underwriter (but not a sub-underwriter) to the offer of the securities named in the prospectus or the profile statement with his consent if –

(i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;

(ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or

(iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;

(f) a person named in the prospectus or the profile statement with his consent as having made -

(i) the statement that is false or misleading, if he intentionally or recklessly makes that statement; or

(ii) a statement on which the false or misleading statement is based, if he knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw his consent



**Existing Provision**

**Proposed Amendment**

but only in respect of the inclusion of the statement;

(g) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.

(4A) For the purposes of this subsection and subsection (4)—

(a) remedial action includes any the following:

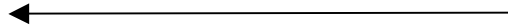
(i) prevent the statement from being included or to have the information or circumstance included in the prospectus or profile statement, as the case may be;

(ii) procure the lodgment of a supplementary or replacement prospectus under section 241; and

(b) a situation where a person will be regarded as reckless as to the matter referred to in subsection (4)(d)(iii) or (e)(iii) includes a situation where, having been put upon inquiry that the statement to be or which has been included in the prospectus or profile statement is likely to be false or misleading, or that the information or circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, the person fails to—

(i) make all inquiries as are reasonable in the circumstances to verify this; and

(ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted



## Existing Provision

~~(5) Where a prospectus relating to any shares in or debentures of, or any units of shares in or debentures of, a corporation is issued and the prospectus omits to state any matter required to be stated as prescribed by the Authority, each director of the corporation and other person responsible for the prospectus shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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. —(1) Where an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation 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 shares or debentures, or units of shares or debentures;~~

~~(b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an~~

## Proposed Amendment by the outcome of the inquiries.”

offer of securities is made in or accompanied by a prospectus or profile statement or, in the case of an offer referred to in section 280, a prospectus or profile statement is prepared and issued in relation to the offer

the securities

### Existing Provision

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 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 (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) if the offer or invitation is made by a corporation, each director of the corporation making the offer or invitation;~~

### Proposed Amendment

- (a) the person making the offer;
- (b) if the offer is made by an entity, each director or equivalent person of the entity;

### Existing Provision

~~(c) if the offer or invitation is made by a corporation, a person named in the prospectus or the profile statement with his consent as a proposed director of the corporation;~~

~~(d) an underwriter (but not a sub-underwriter) to the issue or sale of the shares or debentures, or units of shares or debentures, 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 shares, debentures, or units of shares or debentures as a result of an offer or invitation that was made in or accompanied by a profile statement is taken to have acquired the shares or debentures, or units of shares or debentures, 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

### Proposed Amendment

(c) if the offer is made by an entity, a person named in the prospectus or the profile statement, with his consent, as a proposed director or equivalent person of the entity;

(d) an issue manager to the issue or sale of the securities;

(e) an underwriter (but not a sub-underwriter) to the issue or sale of the securities, named in the prospectus or the profile statement with his consent;

securities as a result of an offer

**Existing Provision**

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.

**Proposed Amendment**

referred to in section 253(4)(a), (b) or (c) or 254(3)

**Defences**

**255.** —(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.

referred to in section 253(4)(a), (b) or (c) or 254(3)

(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

### Existing Provision

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.

### Proposed Amendment

(a) if the person is an entity, someone other than a director, employee or agent of the entity;"; and

(a) a proposed director or equivalent person of the issuer;

(aa) an issue manager or underwriter;

## Existing Provision

### ~~Offer information statement for renounceable rights issues~~

~~256.—(1) An offer of shares in or debentures of, or units of shares in or debentures of, a company for subscription or purchase, or an invitation to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a company 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 members or debenture holders of that company; and~~

~~(b) an application has been or will be made for permission for the shares or debentures, or units of shares or debentures, 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) Sections 249, 250, 253, 254 and 255 shall, with the necessary modifications, apply in relation to an offer information statement~~

## Proposed Amendment



### Existing Provision

~~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 shares or debentures for sale deemed prospectus**

**257.** — ~~(1) Subsection (2) applies where a corporation allots or agrees to allot to any person any shares in or debentures of, or any units of shares in or debentures of, the corporation with a view to all or any of them being offered for sale to the public.~~

### Proposed Amendment

[ securities

(1) Subsection (2) applies where an entity allots or agrees to allot to any person any securities of the entity with a view to all or any of them being offered for sale to another person, being an offer that does not qualify for an exemption under Subdivision 4 of this Division (other than section 280) .

### Existing Provision

(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 by the corporation and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if —

(a) the shares, debentures or units of shares or debentures had been offered to the public; and

(b) persons accepting the offer in respect of any shares, debentures or units of shares or debentures were subscribers therefor,

but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(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, shares or debentures, or units of shares or debentures was made with a view to the shares or debentures, or units of shares or debentures, being offered for sale to the public if it is shown —

(a) that an offer of the shares, debentures, units of shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the corporation in respect of the shares, debentures, or units of shares or debentures had

### Proposed Amendment

entity

(a) an offer of the securities has been made; and

(b) persons accepting the offer in respect of any securities were subscribers therefor.

the persons making the offer

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

(a) that an offer of the securities or of any of them for sale was made within 6 months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the entity in respect of the securities had not been so received.

### Existing Provision

~~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 of a corporation.~~

(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 by the corporation in respect of the shares or debentures, or units of shares or debentures, to which the offer relates; and~~

~~(b) the place and time at which a copy of the contract under which the shares or debentures, or units of shares or debentures, have been or are to be allotted may be inspected.~~

~~(6) Where an offer to which this section relates is made by a corporation or a firm, it shall be sufficient if the document referred to in subsection (2) is signed on behalf of the corporation or firm by 2 directors of the corporation or not less than half of the members of the firm, as the case may be, and any such director or member may sign by his agent authorised in writing.~~

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

~~258.—(1) All application and other moneys paid prior to allotment by any applicant on account of shares or debentures, or units of shares or debentures offered to the public shall, until the allotment~~

### Proposed Amendment

directors or equivalent persons of an entity

(a) the net amount of the consideration received or to be received by the entity in respect of the securities to which the offer relates; and

(b) the place and time at which a copy of the contract under which the securities have been or are to be allotted may be inspected.

### Existing Provision

~~of the shares or debentures or units of shares or debentures, be held by the company upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the company solely for the purpose of depositing the application and other moneys that are paid by applicants for those shares or debentures, or units of shares or debentures.~~

~~(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 of the company 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 shares and debentures where prospectus indicates application to list on securities exchange**

**259.** —(1) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures, or units of shares or debentures offered thereby to be

### Proposed Amendment

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

258.-(1) All application and other moneys paid prior to allotment by any applicant on account of securities offered to him shall, until the allotment of the securities, be held by the person making the offer of the securities upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those securities.

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

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

securities

securities

**Existing Provision**

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 shares or debentures, or units of shares or debentures, 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 shares or debentures, or units of shares or debentures, 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 corporation shall, subject to subsection (3), immediately repay without interest all

**Proposed Amendment**

person making the offer



**Existing Provision**

**Proposed Amendment**

moneys received from applicants in pursuance of the prospectus, and if any such moneys is not repaid within 14 days after the ~~corporation~~ so becomes liable to repay it then, in addition to the liability of ~~the corporation~~, the directors of the ~~corporation~~ shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of such 14 days.

person making the offer

or equivalent persons

(3) Where in relation to ~~any shares in or debentures of, or units of shares in or debentures of, a corporation~~ —

any securities of an entity

(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 corporation made before any share or debenture, or unit of share or debenture, is purported to be allotted, exempt the allotment of the shares or debentures, or units of shares or debentures,~~ from the provisions of this section ; and the Authority shall give notice of such exemption in the *Gazette*.

the entity made before any of the securities are purported to be allotted, exempt the allotment of the securities

or equivalent person

(4) A director shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for ~~shares or debentures, or units of shares or debentures,~~ to waive compliance with any requirement of this section or purporting to do so shall be void.

securities

### Existing Provision

(6) Without limiting the application of any of its provisions, this section shall have effect —

~~(a) in relation to any shares or debentures, or units of shares or debentures agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and~~

~~(b) in relation to a prospectus offering from applicants in pursuance of the prospectus for sale as if —~~

~~(i) a reference to sale were substituted for a reference to allotment;~~

~~(ii) the persons by whom the offer is made, and not the corporation, were liable under subsection (2) to repay money received from applicants, and references to the corporation's liability under that subsection were construed accordingly; and~~

~~(iii) for the reference in subsection (8) to the corporation and every officer of the corporation who is in default there were substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.~~

(7) All moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the corporation may become liable to repay it under subsection (2).

### Proposed Amendment

(a) in relation to any securities agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering securities for sale as if a reference to sale were substituted for a reference to allotment.

the person making the offer”;

**Existing Provision**

~~(8) If default is made in complying with subsection (7), the corporation and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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 ~~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 ~~shares in or debentures of, or units of shares in or debentures of, a corporation~~ if it includes —

(a) a false or misleading statement that permission has been

**Proposed Amendment**

(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

or equivalent persons

or equivalent person

securities of an entity



**Existing Provision**

granted for those ~~shares or debentures, or units of shares or debentures,~~ 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 ~~shares or debentures, or units of shares or debentures~~ on, any securities exchange, or to any requirements of a securities exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the securities exchange within 3 days 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 ~~memorandum and articles of the corporation~~ comply or have been drawn so as to comply with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the ~~shares or debentures, or units of shares or debentures,~~ to which the prospectus relates to be listed for

**Proposed Amendment**

securities

securities

memorandum and articles or other constituent document of the issuer

securities

**Existing Provision**

quotation on the official list of the securities exchange.

**Proposed Amendment**

**Prohibition of allotment unless minimum subscription received**

**260.** —(1) No allotment shall be made of any ~~shares or debentures, or units of shares or debentures~~ of a company offered to the public unless —

← [ securities of a company

(a) the minimum subscription has been subscribed; and

(b) the sum payable on application for the ~~shares or debentures, or units of shares or debentures~~ so subscribed has been received by the company,

← [ securities

but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall —

~~(a) be calculated on the nominal value of each share or debenture, or each unit of share or debenture, and where the shares or debentures, or units of shares or debentures, are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share or debenture, or unit of share or debenture; and~~

← [ (a) be calculated based on the price at which each security is offered or will be offered; and

(b) be reckoned exclusively of any amount payable otherwise than in cash.

### Existing Provision

~~(3) The amount payable on application on each share or debenture, or each unit of share or debenture, offered to the public shall not be less than 5% of the nominal value of the share or debenture, or unit of share or debenture.~~

(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 ~~shares or debentures, or units of shares or debentures,~~ 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 of the company shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months; but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) An allotment made by a company 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 company —

(a) within one month after the holding of the statutory meeting of the company and not later; or

(b) in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later,

### Proposed Amendment

(3) The amount payable on application on each security offered shall not be less than 5% of the price at which each security is offered or will be offered.

securities

### Existing Provision

and the allotment shall be so voidable notwithstanding that the company is in the course of being wound up.

(7) Every director of a company 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 compensate the company and the allottee respectively for any loss, damages or costs which the company 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 ~~shares or debentures, or units of shares or debentures,~~ to waive compliance with any requirement of this section shall be void.

securities

### **Preliminary provisions**

**261.** — ~~(1) Subject to subsection (1A), this Subdivision shall apply where a corporation or any other entity makes to the public an offer of debentures or an invitation to subscribe for or purchase debentures.~~

~~(1A) Sections 268, 269 and 270 shall not apply if the borrowing corporation is a prescribed corporation.~~

(1) Subject to subsection (1A), this Subdivision shall apply where an entity makes an offer of debentures.

(1A) Sections 268, 269 and 270 shall not apply if the borrowing entity is a prescribed entity.

### Proposed Amendment

**Existing Provision**

**Proposed Amendment**

(1B) In subsection (1A), "~~prescribed corporation~~" means —

(a) any bank licensed under the Banking Act (Cap. 19); or

(b) ~~corporation or other entity or any corporation or other~~ entity of a class which has been declared by the Authority by notification published in the *Gazette* to be a prescribed corporation for the purposes of this section, subject to such conditions or restrictions as it may think fit to impose by notice in writing.

prescribed entity

entity or any

(1C) The Authority may, at any time by notice in writing, vary or revoke any condition or restriction imposed under subsection (1B).

~~(2) In this Subdivision —~~

~~"offer in respect of debentures" means an offer of debentures of a corporation or any other entity to the public in Singapore;~~

~~"invitation in respect of debentures" means an invitation to the public in Singapore to subscribe for or purchase debentures of a corporation or any other entity.~~

(3) In this Subdivision, a corporation is related to another corporation if it is deemed to be related to that other corporation by virtue of section 6 of the Companies Act (Cap. 50).

## Existing Provision

**262.** Deleted by Act 16/2003, wef 22/12/2003.

## Proposed Amendment

### Offer of asset-backed securities

**262.**-(1) An offer of asset-backed debentures shall be made only by the special purpose vehicle under the securitisation transaction to which the debentures relate.

(2) The special purpose vehicle making the offer shall not engage in any activities other than those that are for the purposes of or incidental to the offer or the securitisation transaction.

(3) In this section –

“asset-backed debentures” means debentures or units of debentures issued pursuant to a securitisation transaction;

“securitisation transaction” means an arrangement that involves the transfer or assignment of assets to a corporation where –

- (a) such transfer is funded by the issue of debentures or units of debentures not being debentures or units of debentures that are directly secured, in whole or in part, by fixed assets; and
- (b) payments in respect of such debentures or units of debentures are principally derived, directly or indirectly, from the cash flows generated by the assets; and

“special purpose vehicle” means the corporation to which assets are transferred or assigned under a securitisation transaction.

**Existing Provision**

**Proposed Amendment**

**263.** Deleted by Act 16/2003, wef 22/12/2003.

**264.** Deleted by Act 16/2003, wef 22/12/2003

**Power of court in relation to certain irredeemable debentures**

**265.** —(1) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the court so orders, be enforceable, immediately or at such other time as the court directs if, on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of any holder of the debentures, the court is satisfied that —

(a) at the time of the issue of the debentures the assets of the ~~borrowing corporation~~ which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

[ borrowing entity

(b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking pari passu if any); and

(c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum

**Existing Provision**

and the ~~borrowing corporation~~ is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment.

borrowing entity

(2) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

**Duties of trustees**

**266.**

(1) Deleted by Act 16/2003, wef 22/12/2003.

(2) Where, after due inquiry, the trustee for the holders of the debentures at any time is of the opinion that the assets of the ~~borrowing corporation~~ and of any of its guarantor corporations which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Authority for an order under this subsection.

borrowing entity

(3) The Authority, on such application —

borrowing entity

(a) after giving the ~~borrowing corporation~~ an opportunity of making representations in relation to that application, by order in writing served on the ~~corporation~~ at its registered office in Singapore, may impose such restrictions on the activities of the ~~borrowing corporation~~, including restrictions

entity

borrowing entity

**Proposed Amendment**



**Existing Provision**

on advertising for deposits or loans and on borrowing by the ~~corporation~~ as the Authority thinks necessary for the protection of the interests of the holders of the debentures; or

(b) may, and if the ~~borrowing corporation~~ so requires, shall direct the trustee to apply to the court for an order under subsection (5); and the trustee shall apply accordingly.

(4) Where —

(a) after due inquiry, the trustee at any time is of the opinion that the assets of the ~~borrowing corporation~~ and of any of its guarantor ~~corporations~~ which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or

(b) the ~~borrowing corporation~~ has contravened an order made by the Authority under subsection (2),

the trustee may, and where the ~~borrowing corporation~~ has requested the trustee to do so, shall apply to the court for an order under subsection (5).

(5) Where an application is made to the court under subsection (3) or (4), the court may, after giving the ~~borrowing corporation~~ an opportunity to be heard, by order, do all or any of the following things:

(a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers

**Proposed Amendment**

entity

borrowing entity

borrowing entity

entities

borrowing entity

borrowing entity

borrowing entity

**Existing Provision**

necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the court thinks fit;

(b) stay all or any actions or proceedings before any court by or against the ~~borrowing corporation~~;

(c) restrain the payment of any moneys by the ~~borrowing corporation~~ to the holders of debentures of the ~~borrowing corporation~~ or to any class of such holders;

(d) appoint a receiver of such of the property as constitutes the security, if any, for the debentures;

(e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the ~~borrowing corporation~~ or any of its guarantor corporations or the public,

but in making any such order the court shall have regard to the rights of all creditors of the ~~borrowing corporation~~.

(6) The court may vary or rescind any order made under subsection (5) as the court thinks fit.

(7) A trustee in making any application to the Authority or to the court shall have regard to the nature and kind of the security given when the ~~offer or invitation in respect of the debentures was made to the public~~, and if no security was given shall have regard to the position of the holders of the debentures as unsecured creditors of the ~~borrowing corporation~~.

**Proposed Amendment**

borrowing entity

borrowing entity

borrowing entity

borrowing entity

borrowing entity

offer of the debentures was made

borrowing entity

**Existing Provision**

**Proposed Amendment**

(8) A trustee may rely upon any certificate or report given or statement made by any advocate and solicitor, auditor or officer of the ~~borrowing corporation~~ or guarantor ~~corporation~~ if it has reasonable grounds for believing that such advocate and solicitor, auditor or officer was competent to give or make the certificate, report or statement.

borrowing entity

entity

**Powers of trustee to apply to court for directions, etc.**

**267.** —(1) A trustee for the holders of debentures may apply to the court —

(a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or

(b) to determine any question in relation to the interests of the holders of debentures.

(2) The court may —

(a) give such directions to the trustee as the court thinks fit; and

(b) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the court thinks fit or make such other order on the application as the court thinks just.

**Existing Provision**

(3) The court may, on an application under this section, order a meeting of all or any of the holders of debentures to be called to consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as the court thinks fit.

(4) The meeting shall be held and conducted in such manner as the court directs, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints.

**Right of Authority, securities exchange and holders of debentures to apply to court for order**

**267A.** Without prejudice to any other right of action or remedy in any written law or rule of law, a holder of debentures, the Authority or a securities exchange (in a case where the debentures are quoted or listed for quotation on that securities exchange) may apply to the court for an order to compel the trustee for the holders of such debentures to perform his duties as set out in the trust deed relating to those debentures, and the court may either make the order on such terms as it considers appropriate, or dismiss the application.

**Obligations of ~~borrowing corporation~~**

**268.** —(1) Where there is a trustee for the holders of any debentures of a ~~borrowing corporation~~, the directors of the ~~borrowing corporation~~ shall —

(a) at the end of a period not exceeding 3 months ending on a

**Proposed Amendment**

**borrowing entity**

**borrowing entity**

**Existing Provision**

day (being a day after the date of the issue of the relevant prospectus) which the trustee is hereby required to notify the ~~borrowing corporation~~ in writing; and

borrowing entity

(b) at the end of each succeeding period thereafter, being a period of 3 months or such shorter time as the trustee may, in any special circumstances allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and within one month after the end of each such period lodge a copy of the report relating to that period with the Authority and with the trustee.

(2) The report referred to in subsection (1) shall be signed by not less than 2 of the directors on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of subsection (1), shall state —

entity

(a) whether ~~or not the~~ limitations on the amount that the ~~corporation~~ may borrow have been exceeded;

borrowing entity

(b) whether or not the ~~borrowing corporation~~ and each of its guarantor ~~corporations~~ have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;

entities

(c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;

**Proposed Amendment**

**Existing Provision**

**Proposed Amendment**

(d) whether or not any circumstances affecting the ~~borrowing corporation~~, its subsidiaries or its guarantor ~~corporations~~ or any of them have occurred which materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of those circumstances;

borrowing entity  
entities

(e) whether or not there has been any substantial change in the nature of the business of the ~~borrowing corporation~~ or any of its subsidiaries or any of its guarantor ~~corporations~~ since the debentures were first issued to the public which has not previously been reported upon as required by this section and, if so, particulars of that change; and

borrowing entity  
entities

(f) where the ~~borrowing corporation~~ has deposited money with or lent money to or assumed any liability of a ~~corporation~~ which is related to the ~~borrowing corporation~~, particulars of —

borrowing entity

entity

borrowing entity

(i) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report; and

borrowing entity

(ii) the total amounts owing to the ~~borrowing corporation~~ in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liabilities which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a ~~corporation~~ if that ~~corporation~~ has guaranteed the repayment of the debentures of the ~~borrowing corporation~~ and has

entity

borrowing entity

**Existing Provision**

secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the ~~borrowing corporation~~.

borrowing entity

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

borrowing entity

(4) Where there is a trustee for the holders of any debentures issued by a ~~borrowing corporation~~, the ~~borrowing corporation~~ and each of its guarantor ~~corporations~~ which has guaranteed the repayment of the moneys raised by the issue of those debentures shall, whether or not any demand therefor has been made —

entities

(a) in writing furnish the trustee, within 21 days after the creation of the charge, with the particulars of any charge created by the ~~corporation~~ or the guarantor ~~corporation~~, as the case requires; and

entity

(b) when the amount to be advanced on the security of the charge is indeterminate, in writing furnish the trustee, within 7 days after the advance, with particulars of the amount or amounts in fact advanced.

(5) Where any such advance referred to in subsection (4) (b) is merged in a current account with bankers or trade creditors, it shall be sufficient for particulars of the net amount outstanding in respect of any such advance to be furnished every 3 months.

borrowing entity

(6) The directors of every ~~borrowing corporation~~ and of every

**Existing Provision**

**Proposed Amendment**

guarantor corporation shall cause to be made out and lodged with the Authority and with the trustee for the holders of the debentures, if any —

entity

(a) a profit and loss account for the first 6 months of every financial year of the corporation and a balance-sheet as at the end of that period, not later than 3 months after the expiration of the period of 6 months; and

entity

(b) a profit and loss account for every financial year of the corporation and a balance-sheet as at the end of that period, not later than 5 months after the expiration of that financial year.

(7) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(8) Section 201 (4) to (7) and (11) to (16) and section 207 (1), (2) and (7) of the Companies Act (Cap. 50), shall, with such adaptations as are necessary, be applicable to every profit and loss account and balance-sheet made out and lodged under subsection (6) as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections.

(9) Where —

(a) the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1); or

borrowing entity



**Existing Provision**

**Proposed Amendment**

(b) the directors of a ~~borrowing corporation~~ or the directors of a guarantor ~~corporation~~ do not lodge with the trustee the balance-sheets and profit and loss accounts as required by subsection (6) within the time prescribed,

borrowing entity

entity

the trustee shall immediately lodge notice of that fact with the Authority.

borrowing entity

(10) Notwithstanding anything in subsection (8), a profit and loss account and balance-sheet of a ~~borrowing corporation~~ or its guarantor ~~corporation~~ required to be made out and lodged in accordance with subsection (6) —

entity

(a) need not be audited; or

(b) the audit thereof may be of a limited nature or extent,

if the trustee for the holders of the debentures of the ~~borrowing corporation~~ has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

borrowing entity

(11) Where the trustee has by notice in writing given his consent under subsection (10), the directors of the ~~borrowing corporation~~, or the directors of the guarantor ~~corporation~~, in respect of whose profit and loss account and balance-sheet the notice was given, shall lodge with the Authority a copy of the notice at the time when the profit and loss account and balance-sheet to which the notice relates are lodged with the Authority.

borrowing entity

entity

(12) Notwithstanding anything in this section, a profit and loss account and balance-sheet of a ~~borrowing corporation~~ or its

borrowing entity

**Existing Provision**

**Proposed Amendment**

~~guarantor corporation~~ required to be made out and lodged in accordance with subsection (6) may, unless the trustee for the holders of the debentures of the ~~borrowing corporation~~ otherwise requires in writing, be based upon the value of the stock in trade of the ~~borrowing corporation~~ or the ~~guarantor corporation~~, as the case may be, as reasonably estimated by the directors of the ~~borrowing corporation~~ or guarantor corporation.

entity

borrowing entity

borrowing entity

entity

borrowing entity

(13) The estimation of the directors referred to in subsection (12) shall be made on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance-sheet of that ~~corporation~~ laid before the ~~corporation~~ at its last preceding annual general meeting and certified in writing by the directors as such.

entity

(14) In this section, a reference to a director of a ~~borrowing corporation~~, in a case where the ~~borrowing corporation~~ is not a ~~corporation~~, shall be read as a reference to such person of the ~~borrowing corporation~~ as the Authority may approve by notice in writing

borrowing entity

entity

borrowing entity

**Obligation of guarantor corporation to furnish information**

**269.** —(1) For the purpose of the preparation of a report that, by this Subdivision, is required to be signed by or on behalf of the directors, or persons approved by the Authority, of a ~~borrowing corporation~~ or any of them, that ~~borrowing corporation~~ may, by notice in writing, require any of its guarantor corporations to furnish it with any information relating to that guarantor corporation which is, by this Subdivision, required to be contained

borrowing entity

**Existing Provision**

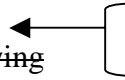
in that report.

(2) The guarantor corporation shall furnish the ~~borrowing corporation~~ with the information required under subsection (1) before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice.

(3) A guarantor corporation which fails to comply with a requirement contained in a notice given under subsection (1) and every officer of that corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

**Proposed Amendment**

borrowing entity



**Loans and deposits to be immediately repayable on certain events**

**270.** —(1) Where there is, in any prospectus issued in connection with an offer ~~or invitation in respect~~ of debentures, a statement as to any particular purpose or project for which the moneys received by the ~~borrowing corporation~~ in response to the ~~invitation~~ are to be applied, the ~~borrowing corporation~~ shall, where there is a trustee for the holders of those debentures, from time to time ~~make reports~~ to the trustee as to the progress that has been made towards achieving such purpose or completing such project.

offer

borrowing entity



(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under section 268 (1).

(3) When it appears to the trustee for the holders of the debentures

**Existing Provision**

that such purpose or project has not been achieved or completed —

(a) within the time stated in the prospectus within which the purpose or project is to be achieved or completed; or

(b) where no such time was stated, within a reasonable time,

the trustee may and, if in his opinion it is necessary for the protection of the interests of the holders of the debentures, shall give notice in writing to the ~~borrowing corporation~~ requiring it to repay the moneys so received by the ~~borrowing corporation~~ and, within one month after such notice is given, lodge with the Authority a copy thereof.

borrowing entity

(4) The trustee shall not give notice under subsection (3) if he is satisfied —

(a) that the purpose or project has been substantially achieved or completed;

(b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(c) that the failure to achieve the purpose or project was due to circumstances beyond the control of the ~~borrowing corporation~~ that could not reasonably have been foreseen by the ~~borrowing corporation~~ at the time that the prospectus was issued.

borrowing entity

(5) Upon receipt by the ~~borrowing corporation~~ of a notice referred to in subsection (3), the ~~borrowing corporation~~ shall be liable to repay, and on demand in writing by a person entitled thereto shall

borrowing entity

**Existing Provision**

**Proposed Amendment**

immediately repay to him any moneys owing to him as the result of a loan or deposit made in response to the invitation unless —

offer

(a) before the moneys were accepted by the borrowing corporation, the borrowing corporation had given notice in writing to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used and the moneys were accepted by the borrowing corporation accordingly; or

borrowing entity

(b) the borrowing corporation by notice in writing served on the holders of the debentures —

borrowing entity

(i) had specified the purpose or project for which the moneys would in fact be applied by the borrowing corporation; and

borrowing entity

(ii) had offered to repay the moneys to the holders of the debentures, and that person had not within 14 days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the borrowing corporation repayment of the money.

(6) Where the borrowing corporation has given a notice in writing as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the borrowing corporation, this section shall apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied

borrowing entity

## **Existing Provision**

## **Proposed Amendment**

### **Liability of trustees for debenture holders**

**271.** —(1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee.

(2) Subsection (1) shall not invalidate —

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given —

(i) on the agreement thereto of a majority of not less than three fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on his ceasing to act.

(3) Subsection (1) shall not operate —

(a) to invalidate any provision in force on 29th December 1967 so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or

(b) to deprive any trustee of any exemption or right to be

### Existing Provision

indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

### Proposed Amendment

#### **Interpretation of this Subdivision**

**272.** 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 shares, debentures or units of shares or debentures is a reference to an offer to the public in Singapore of shares in, debentures of, or units of shares in or debentures of, a corporation for subscription or purchase;~~

~~(c) a reference to an invitation in respect of shares, debentures or units of shares or debentures is a reference to an invitation to the public in Singapore to subscribe for or purchase shares in, debentures of, or units of shares in or debentures of, a corporation; and~~

~~(d) a reference to the issuer of shares or debentures or units of shares or debentures is a reference to —~~

~~(i) in the case of shares or units of shares, a corporation which issues or proposes to issue those shares, or units of shares; or~~

~~(ii) in the case of debentures or units of debentures, a corporation or any other entity which issues or proposes to issue those debentures or units of debentures.~~

#### **Issue or transfer of securities for no consideration**

**272.**-(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities (other than an offer of an option to subscribe for or purchase securities) if no consideration is or will be given for the issue or transfer of the securities.

(2) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of an option to subscribe for or purchase securities if—

(a) no consideration is or will be given for the issue or transfer of the option; and

(b) no consideration is or will be given for the underlying securities on the exercise of the option.

## Existing Provision

## Proposed Amendment

### Small offers

272A.-(1) “(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to personal offers of securities of an entity by a person if—

(a) the total amount raised by the person from such offers within any period of 12 months does not exceed -

(i) \$5 million (or its equivalent in a foreign currency); or

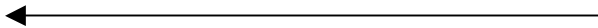
(ii) such other amount as the Authority may, by order published in the Gazette, specify in substitution for the amount specified in subparagraph (i);

(b) the person making the offer notifies every person to whom he makes the offer that -

(i) the offer is made in reliance on the exemption in this subsection; and

(ii) the securities being offered shall not be subsequently sold to any person other than persons specified in subsection (7)(a) within 6 months from the date the securities were acquired in reliance on the exemption, unless such subsequent offer is made in compliance with Subdivisions (2) and (3) of this Division.

(1A) For the purposes of subsection (1)(b), the person making the offer is deemed to have notified every person to whom he





## Existing Provision

## Proposed Amendment

makes the offer if such notification is contained on the first page of any notice, circular, material, advertisement, publication or other document issued in connection with the offer.

(2) In subsection (1), a personal offer of securities is one that—

(a) may only be accepted by the person to whom it is made; and

(b) is made to a person who is likely to be interested in that offer, having regard to--

(i) previous contact between the person making the offer and that person;

(ii) some professional or other connection between the person making the offer and that person; or

(iii) statements or actions by that person that indicate that he is interested in offers of that kind.

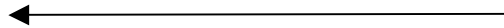
(3) In determining the amount raised by an offer, the following shall be included:

(a) the amount payable for the securities at the time when they are issued;

(b) if the securities are shares issued partly-paid, any amount payable at a future time if a call is made;

(c) if the security is an option, any amount payable on the exercise of the option; and

(d) if the securities carry a right to convert the securities into other securities, any amount payable on the exercise of that right.



## Existing Provision

## Proposed Amendment

(4) In determining whether the amount raised by an offer does not exceed the applicable amount specified in subsection (1)(a), any amount raised by the person making the offer by a previous offer of securities issued by the same entity shall be included if the second-mentioned offer –

- (a) was made within the period of 12 months ending with the date on which the first-mentioned offer is made; and
- (b) is one to which Subdivisions (2) and (3) of this Division (other than section 257) do not apply but only by virtue of this section.

(5) For purposes of this section, the Authority may determine in writing that an individual, an entity or a trust is closely related to the person making the offer of securities in reliance on the exemption in subsection (1) (referred to in this subsection as the exempt offer), in which case, any amount raised from -

- (a) a previous offer of securities made by such individual, entity or trust; or
- (b) a previous offer of securities in such entity or units in such trust made by the person making the offer,

shall be included in determining whether the exempt offer exceeds the applicable amount specified in subsection (1)(a) if such previous offer –

- (i) was made within the period of 12 months ending with the date on which the exempt offer is made; and
- (ii) is one to which Subdivisions (2) and (3) of this Division (other than section 257) do not apply but only

**Existing Provision**

**Proposed Amendment**

by virtue of this section.

(6) For the purpose of subsection (5) –

(a) “interest”, in relation to a unit in a trust, means any right or interest, whether legal or equitable, in the unit of the trust, by whatever name called, and includes any option to acquire any such right or interest in the unit of the trust; and

(b) “unit”, in relation to a trust, means a right or financial stake of a unitholder in the trust; and

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

(7) For the purpose of this section, an offer of securities made by a person acting as an agent of another person shall be treated as an offer made by that other person.

(8) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer by any person to sell any securities acquired from an offer made in reliance on the exemption in subsection (1) (referred to in this subsection as an initial offer) to any other person if and only if —

(a) the offer is one—

(i) that may only be accepted by the person to whom it is made; and

(ii) that is made -



**Existing Provision**

**Proposed Amendment**

(A) to a person who is likely to be interested in the offer having regard to—

(ZA) previous contact before the date of the offer between the person making the initial offer and that person;

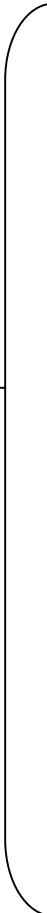
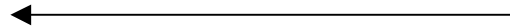
(ZB) some professional or other connection established before that date between the person making the initial offer and that person;

(ZC) statements or actions made before that date by that person that indicate that he is interested in offers of that kind; or

(B) in reliance on an exemption under section 272, 274 or 275;

(b) the offer is made within 6 months from the date on which the securities were initially acquired in reliance on the exemption in subsection (1); and

(c) the first-mentioned person provides a notification in accordance with paragraph (b) of subsection 1, and the reference in that paragraph to the date shall refer to the date the securities were acquired under the initial offer.



## Existing Provision

## Proposed Amendment

### Private placement

272B.-(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to offers of securities of an entity that are made by a person to no more than –

20 persons; or

such other number of persons as the Authority may, by order published in the Gazette, specify in substitution for the number specified in sub-paragraph (a).

(2) In determining whether an offer of securities is made to no more than the applicable number of persons specified in subsection (1), persons (other than those to whom the first-mentioned offer is made) to whom any other offer of securities of the same entity made by the same person shall be included if the second-mentioned offer –

(a) was made within the period of 12 months ending with the date on which the first-mentioned offer is made; and

(b) is one to which Subdivisions (2) and (3) of this Division (other than section 257) do not apply but only by virtue of this section.

(3) For purposes of this section, the Authority may determine in writing that an individual, an entity or a trust is closely related to the person making the offer of securities in reliance on the exemption in subsection (1) (referred to in this subsection as the exempt offer), in which case, the persons to whom -

(a) a previous offer of securities made by such individual, entity or trust; or

(b) a previous offer of securities in such entity or units in such

**Existing Provision**

**Proposed Amendment**

trust made by the person making the offer;

shall be included in determining whether the exempt offer is made to no more than the applicable number of persons specified in subsection (1) if such previous offer –

(i) was made within the period of 12 months ending with the date on which the exempt offer is made; and

(ii) is one to which Subdivisions (2) and (3) of this Division (other than section 257) do not apply but only by virtue of this section..

(4) For the purpose of subsection (3) –

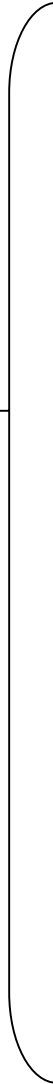
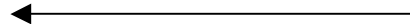
(a) “interest”, in relation to a unit in a trust, means any right or interest, whether legal or equitable, in the unit of the trust, by whatever name called, and includes any option to acquire any such right or interest in the unit of the trust; and

(b) “unit”, in relation to a trust, means a right or financial stake of a unitholder in the trust; and

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

(5) For the purposes of sub-section (1) –

(a) an offer of securities to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or



**Existing Provision**

**Proposed Amendment**

trust is not formed primarily for the purpose of acquiring the securities which are the subject of the offer;

(b) an offer of securities to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the securities which are the subject of the offer;

(c) an offer of securities to 2 or more persons who will own the securities acquired as joint owners shall be treated as an offer to a single person;

(d) offers of securities made by a person as an agent of another person shall be treated as offers made by that other person; and

(e) where—

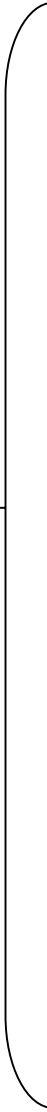
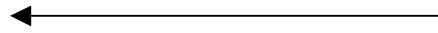
(i) an offer of securities is made to a person in reliance on the exemption under subsection (1) with a view to those securities being subsequently offered for sale to another person; and

(ii) that subsequent offer -

\_\_\_\_\_ (A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under section 280 or subsection (1),

both persons shall be included for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons specified in that subsection.



## Existing Provision

## Proposed Amendment

(6) For the purposes of subsection (5)(e), an offer of securities shall, unless the contrary is proved, be deemed to have been made with a view to them being subsequently offered for sale to another person if it is shown that –

(a) the subsequent offer is made within 6 months after the securities were acquired under the initial offer; or

(b) at the date of the making of the subsequent offer, the whole consideration to be received by the person making the initial offer in respect of the securities had not been so received.

(other than section 257)

an offer of securities

(b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation –

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class.

### **Offer or invitation made under certain circumstances**

**273.** —(1) Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, ~~debentures or units of shares or debentures~~, 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 some or all of the shares of a particular class in a corporation —~~

~~(i) to all members of the corporation or all members of the corporation holding shares of that class; or~~

~~(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that~~



### Existing Provision

class;

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

~~(c) it is made in connection with a proposed compromise or arrangement between —~~

~~(i) a corporation and its creditors or a class of them; or~~

~~(ii) a corporation and its members 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 was incorporated;

### Proposed Amendment

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

an unlisted corporation

(ca) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some of all of the shares of a particular class in a corporation —

(i) to all members of that corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

## Existing Provision

## Proposed Amendment

and such offer complies with the Take-over Code as though the Take-over Code is applicable to it;

(cb) it is made in connection with a proposed compromise or arrangement between –

- (i) an unlisted corporation and its creditors or a class of them; or
- (ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code is applicable to it;

(cc) it is an offer to enter into an underwriting agreement relating to securities;

(cd) it is an offer of securities of a corporation --

- (i) made to existing members or debenture holders of that corporation (whether or not it is renounceable in favour of persons other than existing members or debenture holders); and
- (ii) that is not an offer described in section 277A(1)(a);

(ce) it is an offer of securities of a company made to existing members of that company under section 306 of the Companies Act (Cap. 50);”;



### Existing Provision

(d) it is an offer ~~or invitation in respect~~ of shares or debentures 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 shares or debentures where —

(i) the units of shares or debentures 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 shares or debentures to be listed for quotation or quoted on a securities exchange and the shares or debentures have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange; or

~~(f) it is made (whether or not in relation to shares or debentures or units of shares or debentures that have been previously issued) by a corporation to a qualifying person where the shares or debentures or units of shares or debentures are to be held by or for the benefit of the qualifying person in accordance with a share investment offer or scheme (including a share option offer or 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 share investment offer or 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

### Proposed Amendment

(f) it is made (whether or not in relation to securities that have been previously issued) by a corporation to a qualifying person where the securities are to be held by or for the benefit of the qualifying person and are the securities of the corporation or any of its related corporation.

### Existing Provision

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 by a corporation to a qualifying person in respect of any of its shares or debentures or units of its shares or debentures 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 in relation to a corporation if he is a bona fide director, former director, consultant, adviser, employee or former employee of the corporation or a related corporation of that corporation, 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 shares, debentures or units of shares or debentures 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 shares, debentures or units of shares or debentures,~~

~~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.~~

### Proposed Amendment

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

(a) the cost of providing a prospectus for an offer of securities outweighs the resulting protection to investors; or

(b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer of securities,

Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to a person making such an offer for a period of 6 months from the date of the declaration.

**Existing Provision**

(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), “~~corporation~~” excludes —

(a) a company; and

(b) a corporation ~~whose shares or debentures, or units of shares or debentures,~~ are listed for quotation on a securities exchange.

**~~Offer or invitation made to certain institutions or persons~~**

~~274. Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures, or units of shares or debentures, 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~~

**Proposed Amendment**

“unlisted corporation” means a corporation other than

securities

(10) In subsection (1)(ca) and (cb), “corporation” means a corporation other than a company.”.

**Offer made to institutional investors**

274. Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, whether or not they have been previously issued, made to an institutional investor.

### Existing Provision

~~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~~

### Proposed Amendment

### Existing Provision

~~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. —(1) Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures or units of shares or debentures, 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.~~

### Proposed Amendment

#### **Offer made to accredited investors and certain other investors**

(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, whether or not they have been previously issued-

(a) made to an accredited investor;

(b) made to a corporation whose sole business is to hold investments and whose entire share capital is owned by 1 or more individuals each of whom is an accredited investor;

(c) where the person making the offer is not an individual, made to an officer or equivalent person of the person making the offer or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

(d) where the person making the offer is an individual, made to a spouse, parent, brother, sister, son or daughter of that person,

if—

(i) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer; and

**Existing Provision**

**Proposed Amendment**

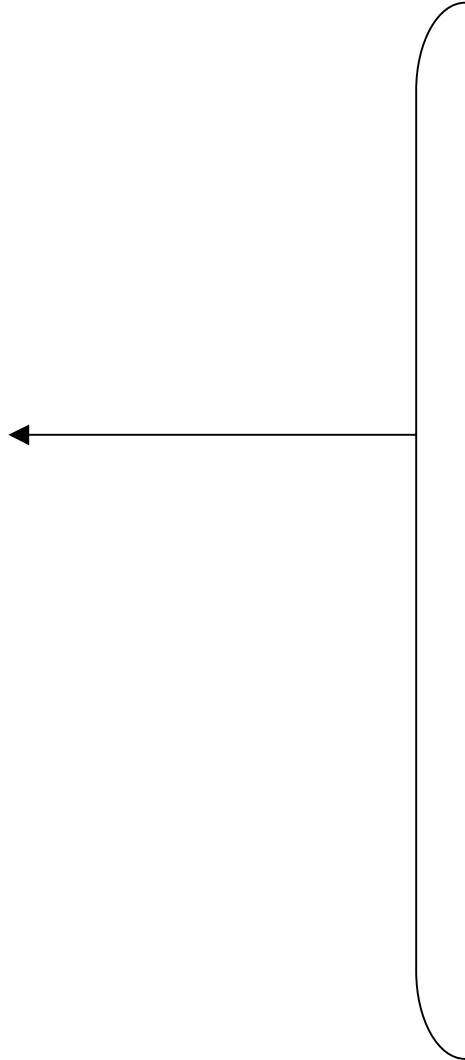
(ii) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.

(1A) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities to a person who acquires the securities as principal, whether or not the securities have been previously issued, if—

(a) the offer is on terms that the securities may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets,

(b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer; and

(c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an





## Existing Provision

(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 shares, debentures or units of shares or debentures~~, but does not include —

- (i) an information memorandum; or
- (ii) an announcement made by a company 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 corporation whose shares, debentures or units of shares or debentures 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~~

## Proposed Amendment

exempt person in respect of dealing in securities.

offer of securities

"information memorandum" means a document—

- (a) purporting to describe the business and affairs of—
  - (i) the issuer and, where applicable, the underlying entity;
  - (ii) the person making the offer; or
  - (iii) both; and
- (b) purporting to have been prepared for delivery to and review by investors specified in subsection (1) or to whom an offer referred to in subsection (1A) is made so

### Existing Provision

~~review by sophisticated investors so as to assist them in making an investment decision in respect of the shares, debentures, or units of shares or debentures which are the subject of the offer or invitation;~~

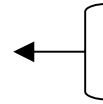
~~"sophisticated investor" means —~~

~~(a) a person who acquires shares or debentures or units of shares or debentures 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 shares, debentures, or units of shares or debentures 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~~



### Proposed Amendment

as to assist them in making an investment decision in respect of the securities which are the subject of the offer.

**Existing Provision**

~~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 ~~shares in or debentures of, or units of shares in or debentures of, a corporation~~ 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 shares or debentures acquired under exemptions in section 274 or 275~~**

~~276.—(1) Where shares in or debentures of, or units of shares in or debentures of, a corporation initially acquired under an exemption in section 274 or 275, are first sold to any of the persons specified in either of those sections—~~

**Proposed Amendment**

securities

subsection (1A)(a)

**Offer of securities acquired pursuant to section 274 or 275**

276.—(1) Where securities initially acquired in reliance on an exemption in section 274 or 275 are sold within the period of 6 months from the date of the initial acquisition to any person other than an institutional investor, a person specified in section 275(1) or a person to whom an offer referred to in section 275(1A) is made, then subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale even if it would otherwise (but for this

### Existing Provision

~~(a) the offer for sale of, or invitation to purchase, those shares, debentures or units of shares or debentures made to any of those persons shall not be regarded as an offer or invitation to the public in respect of shares, debentures or units of shares or debentures; and~~

~~(b) any subsequent offer for sale of, or invitation to purchase, those shares, debentures or units of shares or debentures made to any of those persons shall not be regarded as an offer or invitation to the public in respect of shares, debentures, or units of shares or debentures.~~

~~(2) Where shares in or debentures of, or units of shares in or debentures of, a corporation 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 shares, debentures or units of shares or debentures made to that person shall be regarded as an offer or invitation to the public in respect of shares, debentures or units of shares or debentures, 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 shares, debentures or units of shares or debentures 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 shares, debentures or units of shares or debentures after the expiration of the 6 month period shall not require a prospectus,~~

### Proposed Amendment

subsection) have been exempted therefrom by virtue of section 272A, 272B, 273(1)(d) to (i), 277, 277A, 278 or 279.

(2) Where securities initially acquired in reliance on an exemption in section 274 or 275 are sold to any person other than an institutional investor, a person specified in section 275(1) or a person to whom an offer referred to in section 275(1A) is made, then subdivisions (2) and (3) of this Division (other than section 257) shall not apply to the offer resulting in that sale.

(3) Securities of a corporation—

- (a) whose sole business is to hold investments; and
- (b) whose entire share capital is owned by 1 or more individuals each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any securities in reliance on the exemption under section 275, unless –

- (a) the offer resulting in that transfer is only made to institutional investors, persons specified in section 275(1) or persons to whom an offer referred to in section 275(1A) is made ;
- (b) no consideration is or will be given for the transfer; or
- (c) the transfer is by operation of law.

### Existing Provision

~~provided that the shares, debentures or units of shares or debentures are 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 shares, debentures or units of shares or debentures are not listed for quotation or quoted on a securities exchange or recognised securities exchange.

### Securities exchange offer or invitation

~~277. —(1) Where—~~

~~(a) an offer or invitation to the public is in respect of shares, debentures, or units of shares or debentures which have not been previously issued and are, or are to be, uniform in all respects with shares or debentures, or units of shares or debentures, 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,~~

~~Subdivisions (2) and (3) 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.~~

### Proposed Amendment

(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities that is in respect of--

(a) securities that are, or are to be, uniform in all respects with securities previously issued and listed for quotation on a securities exchange; or

(b) units of a share or debenture that are, or are to be, uniform in all respects with securities previously issued and listed for quotation on a securities exchange;

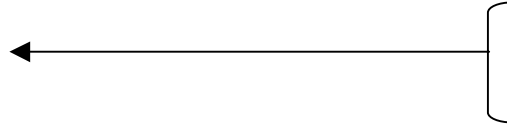
where—

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

(ii) the offer is made in or accompanied by the offer information statement referred to in (b).

**Existing Provision**

**Proposed Amendment**



(1A) Subsection (1) shall apply only 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) shares shall be deemed to be uniform in all respects with shares previously issued notwithstanding that they do not carry the same rights to dividends as the latter during the 12 months immediately following the issue; 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.~~

(3) For the purposes of this section, shares shall be deemed to be uniform in all respects with shares previously issued notwithstanding that they do not carry the same rights to dividends as the latter during the 12 months immediately following the issue.

(3A) Sections 249, 249A, 253, 254 and 255 shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(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~~

subsection (3A)

or section 249A

**Existing Provision**

(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.

**Proposed Amendment**

(1)(i)

subsection (3A)

(6) Where the written consent of an issue manager or underwriter to the issue of an offer information statement is required to be given under section 249A (as applied in relation to that statement under subsection (3A)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.”;

**Renounceable rights issue by a company**

277A.-(1) Subject to subsection (2), Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities that have not been previously issued by a company by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that company where—

(a) an application has been or will be made for permission for the securities to be listed for quotation on any securities exchange;

**Existing Provision**

**Proposed Amendment**

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

(c) the offer is made in or accompanied by the offer information statement referred to in (b).

(2) Subsection (1) shall apply only for a period of 6 months from the date of lodgment of the offer information statement.

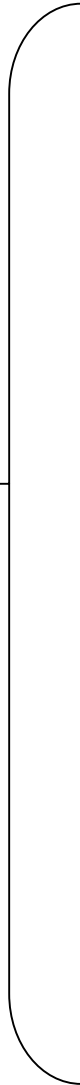
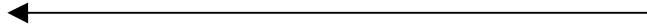
(3) The Authority may, on the application of a company affected by this section, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as may be determined by the Authority.

(4) Sections 249, 249A, 253, 254 and 255 shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4)--

(a) a reference in section 249 or 249A to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment; and

(b) a reference in section 253 or 254 to any information or new circumstance required to





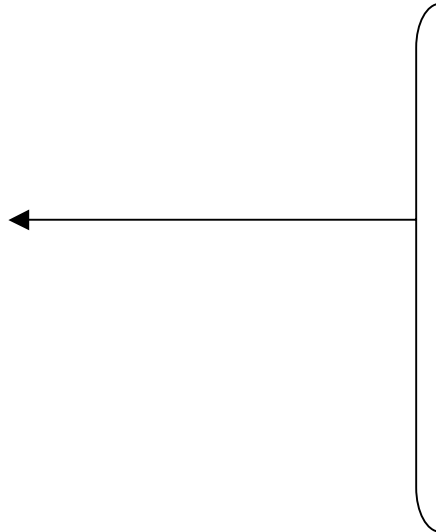
**Existing Provision**

**Proposed Amendment**

be included in a prospectus under section 243 shall be read as a reference to any information prescribed under subsection (1)(b).

(6) Where the written consent of an expert to the issue of an offer information statement is required to be given under section 249 (as applied in relation to that statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

(7) Where the written consent of an issue manager or underwriter to the issue of an offer information statement is required to be given under section 249A (as applied in relation to that statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.



**Offer or invitation in respect of international debentures**

**278.** —(1) Subdivisions (2) and (3) of this Division shall not apply to an offer ~~or invitation in respect of~~ debentures, or units of debentures, by a body incorporated in a country outside Singapore where the offer ~~or invitation~~ —

- (a) is made by the holder of a capital markets services licence to deal in securities or an exempt person under section 99 (1) (a) or (b), to such institutional, professional or business investors as the Authority may, by order in the *Gazette*, specify, being persons or bodies that appear to the Authority to have sufficient expertise to understand any risk involved in buying or selling those debentures, or units of debentures (whether as principal or agent); and

(other than section 257)

### Existing Provision

(b) complies with the conditions specified in subsection (2).

(2) The conditions referred to in subsection (1) (b) are that —

(a) the debentures, or units of debentures, are denominated in a currency, other than the Singapore dollar, and each debenture, or each unit of debenture, has a face value of at least US\$5,000 or its equivalent in another currency; and

(b) the shares of the issuing corporation are listed on a recognised securities exchange or the offer ~~or invitation~~ is guaranteed by a corporation whose shares are listed on a recognised securities exchange.

(3) The Authority may by order in the *Gazette* add to, vary or amend the conditions specified in subsection (2).

### **~~Offer or invitation in respect of debentures made by Government or international financial institutions~~**

**279.** Subdivisions (2) and (3) of this Division ~~shall not apply to an offer or invitation to the public in respect of debentures, or units of debentures, made by or guaranteed by —~~

(a) the Government; or

(b) an international financial institution in which Singapore holds membership of any class or description, whether or not it holds any share in the share capital of that institution.

### Proposed Amendment

(other than section 257)

### Existing Provision

**280.** Deleted by Act 16/2003, wef 22/12/2003.

### Proposed Amendment

#### Offer using ATM and other electronic means

280.-(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of securities using –

(a) any automated teller machine; or

(b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 240(1)(a) or, where applicable, section 240(4) that the offer be made in or accompanied by a prospectus or, where applicable, a profile statement, in respect of the offer.

(2) For the avoidance of doubt, a prospectus or, where applicable, a profile statement must still be prepared and issued in respect of the offer referred to in subsection (1) that complies with section 240(1)(a)(i), (ii) and (iii) or (4)(a) to (d), as the case may be.

(3) Subsection (1) applies only if, before enabling the submission of an application to subscribe for or purchase securities, the automated teller machine or prescribed electronic means indicates to the prospective subscriber or buyer –

(a) how a copy of the prospectus or, where applicable, profile statement in respect of the offer can be obtained; and

(b) that he should read the prospectus or, where applicable, profile statement before submitting his application.

## Existing Provision

### **Revocation of exemption**

**281.** —(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.** 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.

## Proposed Amendment

## Existing Provision

## Proposed Amendment

### Interpretation of this Division

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

"profile statement" means a profile statement referred to in section 296 (2);

"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 units in a collective investment scheme or proposed collective investment scheme, but does not include —

(a) a profile statement; or

(b) any material, advertisement or publication which is authorised by section 300 (other than subsection (3))~~[- or which complies with such requirements as may be prescribed under section 300 (1)];~~

~~["responsible person" , in relation to a collective investment scheme, means —~~

~~(a) in the case of a scheme which is authorised under section 286 or for which an application for authorisation has been~~

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

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, units in a collective investment scheme to be issued or sold and which contains the information required to be included in a prospectus as may be prescribed under section 296(1)(a)(i) except for such information as may be prescribed by the Authority;”

other document used to make an offer of

### Existing Provision

~~made under that section, the manager for the scheme;~~

~~(b) in the case of a scheme which is recognised under section 287 or for which an application for recognition has been made under that section—~~

~~(i) where the scheme is constituted as a corporation, the corporation;~~

~~(ii) where the scheme is not constituted as a corporation, the manager for the scheme;]~~

"replacement document" means a replacement prospectus or a replacement profile statement referred to in section 298 (1), as the case may be;

"supplementary document" means a supplementary prospectus or a supplementary profile statement referred to in section 298 (1), as the case may be;

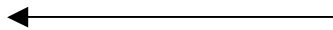
"unit trust" means a collective investment scheme under which the property is held on trust for the participants.

(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.

~~[(3) Any reference in this Division to making an offer of units in a collective investment scheme to the public for subscription or purchase or to making an invitation to the public to subscribe for or purchase units in a collective investment scheme shall, unless the contrary intention appears, include a reference to—~~

### Proposed Amendment

(1A) For the purposes of this Division, “recognised securities exchange” means a corporation declared by the Authority, by order in the Gazette, as a recognised securities exchange for the purposes of Division 1.



### Existing Provision

~~(a) making an offer of units in a collective investment scheme 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 units in a collective investment scheme, as the case may be, whether by selection as customers of the person making the offer or the invitation or in any other manner; and~~

~~(b) inviting applications from any section of the public to subscribe for or purchase units in a collective investment scheme.]~~



### Proposed Amendment

(3) For the purposes of this Division, a person makes an offer of units in a collective investment scheme if, and only if, as principal –

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

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

(4) For the purpose of subsection (3), “sale” includes any disposal for valuable consideration.

### **Code on Collective Investment Schemes**

**284.** —(1) For the more effective administration, supervision and control of collective investment schemes, the Authority shall, under section 321, issue a code, to be known as the Code on Collective Investment Schemes.

(2) The Authority may from time to time revise the Code on Collective Investment Schemes by deleting, amending or adding to the provisions thereof.

(3) The Code on Collective Investment Schemes shall be deemed not to be subsidiary legislation.

### Existing Provision

**Authority may disapply this Division to certain offers and invitations**

**284A.** 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,~~] units in a collective investment scheme is one to which (but for this section) both this Division and Division 1 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.

### **Offers to public**

**285.** —(1) No person shall make an offer of units in a collective investment scheme [~~to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme,~~] if the collective investment scheme has not been authorised under section 286 or recognised under section 287.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 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

### Proposed Amendment

offer of

that offer or a class of offers to which that offer belongs



### **Existing Provision**

offence continues after conviction.

#### **Authorised schemes**

**286.** —(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3), authorise a collective investment scheme constituted in Singapore.

(2) The Authority may authorise, under subsection (1), a collective investment scheme which is constituted as a unit trust if and only if the Authority is satisfied that —

(a) there is a manager for the scheme which satisfies the requirements in subsection (3);

(b) there is a trustee for the scheme approved under section 289;

(c) there is a trust deed in respect of the scheme entered into by the manager and the trustee for the scheme that complies with prescribed requirements; and

(d) the scheme, the manager for the scheme and the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes.

(3) It shall be a condition for the authorisation of a collective investment scheme under subsection (1) that —

(a) the manager for the scheme is —

(i) the holder of a capital markets services licence for fund management or a person exempted under section 99 (1)

### **Proposed Amendment**

### **Existing Provision**

(a), (b), (c) or (d) in respect of fund management; or

(ii) a public company which does not carry on business in fund management or is specified in the Third Schedule or is exempted under section 99 (1) (e), (f), (g) or (h) in respect of fund management; and

(b) the manager for the scheme is a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager.

(4) The Authority may authorise, under subsection (1), a collective investment scheme which is not constituted as a unit trust if and only if the Authority is satisfied that the scheme and the manager for the scheme comply with such requirements as may be prescribed.

(5) The Authority may refuse to authorise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(6) The Authority shall not refuse to authorise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard except that an opportunity to be heard need not be given if the refusal is on the

### **Proposed Amendment**

### Existing Provision

ground that it is not in the public interest to authorise the collective investment scheme on the basis of any of the following circumstances:

- (a) the responsible person 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 responsible person.

~~[(7) Any person who is aggrieved by the refusal of the Authority to authorise a collective investment scheme under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.]~~

(8) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(9) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme authorised under subsection (1).

(10) The responsible person for a collective investment scheme authorised under subsection (1) and the approved trustee for the scheme, to the extent applicable, shall ensure that the conditions and requirements set out in subsections (2), (3) and (4) as applicable to that scheme shall continue to be satisfied.

(11) Notwithstanding subsection (10), a failure by any person to comply with the Code on Collective Investment Schemes shall not of itself render that person liable to criminal proceedings but such

### Proposed Amendment

(7) The responsible person for a collective investment scheme who is aggrieved by the refusal of the Authority to authorise that scheme under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

### **Existing Provision**

failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(12) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may, in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(13) The responsible person for a collective investment scheme which is authorised under subsection (1) shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(14) Where the manager for a collective investment scheme which is constituted as a unit trust and authorised under subsection (1) fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(15) Any person who contravenes subsection (10) or (13) 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.

### **Recognised schemes**

**287.** —(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3),

### **Proposed Amendment**

### Existing Provision

recognise a collective investment scheme constituted outside Singapore.

(2) The Authority may recognise a collective investment scheme under subsection (1) if and only if the Authority is satisfied that —

(a) the laws and practices of the jurisdictions under which the scheme is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under this Division in the case of comparable authorised schemes;

~~[(b) in the case of a scheme which is constituted as a corporation, the corporation is a foreign company registered under Part XI, Division 2 of the Companies Act (Cap. 50);]~~

(c) there is a manager for the scheme which satisfies the requirements in subsection (3);

~~[(d) there is a representative for the scheme who is an individual resident in Singapore for the functions set out in subsection (13);~~

~~(e) the Authority has been furnished with information regarding the situation of the registered office of the foreign company or company referred to in paragraph (b) or subsection (3) (c), as may be applicable, the name and contact particulars of the representative referred to in paragraph (d) and such other information as the Authority may prescribe; and]~~

(f) the scheme, the manager for the scheme and the trustee for the scheme, where applicable, comply with this Act and the

### Proposed Amendment

(d) there is a representative for the scheme for the purposes set out in subsection (13) who is –

- (i) an individual resident in Singapore; or
- (ii) a company, or a foreign company registered under Part XI, Division 2 of the Companies Act (Cap. 50);

(e) the Authority has been furnished with information regarding –

- (i) the name of the representative referred to in paragraph (d) and his address (where such representative is a corporation) or contact particulars (where such representative is an individual); and
- (ii) such other information as the Authority may prescribe; and

**Existing Provision**

Code on Collective Investment Schemes.

(3) It shall be a condition for the recognition of a collective investment scheme under subsection (1) that the manager for the scheme is —

(a) licensed or regulated in the jurisdiction of its principal place of business; ←

(b) a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager[; and] ←

~~[(c) in the case of a scheme which is not constituted as a corporation—~~

~~(i) a foreign company which is registered under Part XI, Division 2 of the Companies Act (Cap. 50);~~

~~(ii) the holder of a capital markets services licence for fund management or a person exempted under section 99 (1) (a), (b), (e) or (d) in respect of fund management; or~~

~~(iii) a public company which does not carry on business in fund management or is specified in the Third Schedule or is exempted under section 99 (1) (e), (f), (g) or (h) in respect of fund management.]~~

and

∴

**Proposed Amendment**

### Existing Provision

(4) The Authority may refuse to recognise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to recognise a collective investment scheme under subsection (1) without giving the person who made the application 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 recognise the collective investment scheme on the basis of any of the following circumstances:

(a) the responsible person 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 responsible person.

~~[(6) Any person who is aggrieved by the refusal of the Authority to recognise a collective investment scheme under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.]~~

(7) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme recognised under subsection (1).

(9) The responsible person for a collective investment scheme

### Proposed Amendment

(6) The responsible person for a collective investment scheme who is aggrieved by the refusal of the Authority to recognise that scheme under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

### **Existing Provision**

recognised under subsection (1) shall ensure that the conditions and requirements set out in subsections (2) and (3), as applicable to that scheme, shall continue to be satisfied.

(10) Notwithstanding subsection (9), a failure by any person to comply with the Code on Collective Investment Schemes shall not of itself render that person liable to criminal proceedings but may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(11) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(12) The responsible person for a collective investment scheme which is recognised under subsection (1) shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(13) The representative for a collective investment scheme which is recognised under subsection (1) shall carry out, or procure the carrying out of the following functions:

(a) facilitate —

- (i) the issuing and redeeming of units in the scheme;
- (ii) the publishing of sale and purchase prices of units in the scheme;
- (iii) the sending of reports of the scheme to participants;
- (iv) the furnishing of such books relating to the sale and

### **Proposed Amendment**



### **Existing Provision**

redemption of units as the Authority may require; and

(v) the inspection of the instruments constituting the scheme;

(b) either maintain for inspection in Singapore a subsidiary register of participants who subscribed for or purchased their units in Singapore, or maintain in Singapore any facility that enables the inspection or extraction of the equivalent information;

(c) within 14 days after any change in the particulars referred to in subsection (2) (e), give notice in writing of such change to the Authority;

(d) furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act; and

(e) such other functions as the Authority may prescribe.

(13A) In carrying out or procuring the carrying out of the functions referred to in subsection (13), the representative shall ensure that —

(a) for the purposes of subsection (13) (a) (ii), the sale and purchase prices of units in the collective investment scheme are published in the language of the prospectus;

(b) for the purposes of subsection (13) (a) (iii), the reports of the scheme sent to participants are prepared in the language of the prospectus, except in relation to any participant who has consented to being sent a report in a language other than the language of the prospectus;

(c) for the purposes of subsection (13) (a) (v), if the

### **Proposed Amendment**

### **Existing Provision**

instruments constituting the scheme are not in the language of the prospectus, an accurate translation of the instruments in the language of the prospectus is made available to a participant for inspection, unless the participant has consented to the making available to him for inspection of the instruments in a language other than the language of the prospectus; and

(d) for the purposes of subsection (13) (b), if the subsidiary register of participants or equivalent information is not in the language of the prospectus, an accurate translation of the register or equivalent information in the language of the prospectus is made available to a participant for inspection or extraction, unless the participant has consented to the making available to him for inspection or extraction of the register or equivalent information in a language other than the language of the prospectus.

(13B) In subsection (13A), “language of the prospectus” means the language of the prospectus accompanying or making the offer of units in the collective investment scheme to the public for subscription or purchase or the invitation to the public to subscribe for or purchase units in the collective investment scheme.

(13C) Section 318A (2) shall not apply to the instruments constituting the scheme referred to in subsection (13) (a) (v) or to the subsidiary register of participants or equivalent information referred to in subsection (13) (b).

(14) Any person who contravenes subsection (9), (12) or (13) 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

### **Proposed Amendment**

### **Existing Provision**

further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

### **Revocation, suspension or withdrawal of authorisation or recognition**

**288.** —(1) The Authority may revoke the authorisation of a collective investment scheme granted under section 286 or the recognition of a collective investment scheme granted under section 287 if —

(a) the application for authorisation or recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the authorisation or recognition;

(aa) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be against the public interest;

(b) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be prejudicial to its participants or potential participants; or

(c) in the case of —

(i) a scheme authorised under section 286, the responsible person for the scheme or the trustee for the scheme, where applicable, fails to comply with section 286 (10) or (13);

### **Proposed Amendment**

### **Existing Provision**

or

(ii) a scheme recognised under section 287, the responsible person for the scheme or the representative for the scheme, where applicable, fails to comply with section 287 (9), (12) or (13).

(2) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1), the Authority may issue such directions as it deems fit to the responsible person for the scheme, including a direction that he —

(a) refund all moneys contributed by the participants of the scheme; or

(b) provide the participants with an option, on such terms as the Authority may approve, to obtain from him a refund of all moneys contributed by them or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider whether the responsible person for the collective investment scheme is able to liquidate the property of the scheme without material adverse financial effect to the participants, and for this purpose, the factors which the Authority may take into account include —

(a) whether a significant amount of the moneys contributed by the participants has been invested;

(b) the liquidity of the property of the scheme; and

(c) the penalties, if any, payable for liquidating the property.

(4) A responsible person who contravenes any of the directions

### **Proposed Amendment**

### **Existing Provision**

issued by the Authority to him under subsection (2) 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.

(5) Notwithstanding subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the authorisation or recognition of a collective investment scheme, suspend the authorisation or recognition of that scheme for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1) or suspends the authorisation or recognition of a collective investment scheme under subsection (5), it shall notify the responsible person for the scheme.

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the responsible person for a collective investment scheme, in such form and manner as may be prescribed, withdraw the authorisation or recognition of that scheme.

(8) The Authority may refuse to withdraw the authorisation or recognition of a collective investment scheme under subsection (7) where the Authority is of the opinion that —

(a) there is any matter concerning the scheme which should be investigated before the authorisation or recognition is withdrawn; or

(b) the withdrawal of the authorisation or recognition would

### **Proposed Amendment**

### Existing Provision

not be in the public interest.

(8A) The Authority shall not —

- (a) revoke the authorisation or recognition of a collective investment scheme under subsection (1);
- (b) suspend the authorisation or recognition of a collective investment scheme under subsection (5); or
- (c) refuse the withdrawal of the authorisation or recognition of a collective investment scheme under subsection (8),

without giving the responsible person of the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the revocation or suspension is on the ground that the continued authorisation or recognition of the scheme is against the public interest on the basis of any of the following circumstances:

- (i) the responsible person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (ii) 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 responsible person.

~~[(8B) Any person who is aggrieved by the revocation under subsection (1), suspension under subsection (5) or refusal of withdrawal under subsection (8) may, within 30 days after he is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.]~~

### Proposed Amendment

### Existing Provision

(9) Where the Authority revokes an authorisation or recognition under subsection (1), suspends an authorisation or recognition under subsection (5) or withdraws an authorisation or recognition under subsection (7), it may —

- (a) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and
- (b) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.

### **Service**

**294.** —(1) Where a collective investment scheme —

- (a) is authorised under section 286, any document relating to

### Proposed Amendment

(8B) The responsible person for a collective investment scheme who is aggrieved by —

- (a) the revocation of the authorisation or recognition, as the case may be, of that scheme by the Authority under subsection (1);
- (b) the suspension of the authorisation or recognition, as the case may be, of that scheme by the Authority under subsection (5); or
- (c) the refusal to withdraw the authorisation or recognition, as the case may be, of that scheme by the Authority under subsection (8).

may, within 30 days after he is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

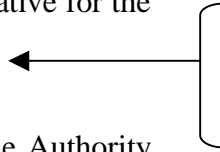
**Existing Provision**

the scheme shall be sufficiently served if served on the responsible person for the scheme at his last known address; or

(b) is recognised under section 287, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme or the representative for the scheme at his last known address.

**Proposed Amendment**

(1A) Subsection (1) applies also to the service of any process.



(2) Any notice or direction to be given or served by the Authority on a corporation (where a collective investment scheme is constituted as a corporation), the manager for a collective investment scheme, the trustee for a collective investment scheme or the representative for a collective investment scheme shall for all purposes be regarded as duly given or served if it has been delivered or sent by post or facsimile transmission to such person at his last known address.

(3) In the case of a corporation, the last known address referred to in subsections (1) and (2) shall be —

(a) if it is a company incorporated in Singapore, the address of its registered office in Singapore; or

(b) if it is a foreign company, the address of its registered office in Singapore or the registered address of its agent or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.



### Existing Provision

#### Requirement for prospectus and profile statement, where relevant

**296.** —(1) No person shall make an offer of units in a collective investment scheme [~~to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, unless such offer or invitation~~] —

(a) is made in or accompanied by a prospectus in respect of the offer [~~or invitation~~] that —

(i) is prepared in accordance with such requirements as may be prescribed;

~~[(ii) is lodged with the Authority together with a written application for the registration of the prospectus; and]~~

(iii) is registered by the Authority; and

(b) complies with such requirements as may be prescribed.

(2) Notwithstanding subsection (1), an offer of units in a collective investment scheme [~~to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme,~~] may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this Subdivision as a profile statement), instead of a prospectus, if —

(a) a prospectus is prepared in accordance with such requirements as may be prescribed under subsection (1) (a) (i) and the profile statement is prepared in accordance with such requirements as may be prescribed;

~~(b) a copy of the prospectus and a copy of the profile statement, each~~

### Proposed Amendment

unless the offer

(ii) a copy of which, being one that has been signed in accordance with subsection (2A), is lodged with the Authority; and

(1A) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

(1B) A preliminary document referred to in subsection (1A) must contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

(b) a copy of the prospectus and a copy of the profile statement, each

## Existing Provision

## Proposed Amendment

### Stop order for prospectus and profile statement

297. —(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, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under section 296;
- (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 responsible person for the scheme~~], direct that no or no further units in a collective investment scheme to which the prospectus relates be issued or sold.

the person making the offer

(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, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under section 296;
- (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or

### Existing Provision

(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 responsible person for the scheme~~], direct that no or no further units in a collective investment scheme to which the profile statement relates be issued or sold.

(3) The Authority shall not serve a stop order under subsection (1) or (2) without giving [~~the responsible 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 in the public interest to do so on the basis of any of the following circumstances:

~~[(a) the responsible person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;]~~

(b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the responsible person.

(4) Where applications for units in a collective investment scheme have been made prior to the service of a stop order, and —

(a) the contributions of the applicants to the scheme have not

### Proposed Amendment

the person making the offer

the person making the offer of units in the collective investment scheme

(a) the person making the offer (being an entity) or the responsible person is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;

(aa) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;

the person making the offer (being an entity) or

**Existing Provision**

**Proposed Amendment**

yet been invested in accordance with the scheme —

~~[(i) where units in the scheme have not been issued to the applicants, the responsible person for the scheme shall treat such applications as having been withdrawn; or]~~

(ii) where units in the scheme have been issued to the applicants, the issue of the units shall be deemed to be void,

and ~~[the responsible person]~~ shall, within 7 days from the date of the stop order, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to ~~[the responsible person]~~, its agent, or any person through whom the applicant has applied for the units; or

(b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by notice in writing issue such directions to ~~[the responsible person for the scheme as it deems fit, including a direction that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund]~~ of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(5) In determining whether to issue a direction under subsection (4) to ~~[the responsible person]~~ to refund the contributions of the applicants, the Authority shall consider whether the responsible person for the scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants,

(i) where units in the scheme have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled; or

the person making the offer of units in the scheme

that person

the person making the offer of units in the scheme as it deems fit, including a direction that the person provide the applicants with an option, on such terms as the Authority may approve, to obtain from that person a refund

the person making the offer of units in the scheme

### Existing Provision

and for this purpose, the factors which the Authority may take into account include:

- (a) whether a significant amount of the contributions of the participants has been invested;
- (b) the liquidity of the property of the collective investment scheme; and
- (c) the penalties, if any, payable for liquidating the property.

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

(7) If the Authority is of the opinion that any delay in serving a stop order pending the hearing required under subsection (3) is not in the interests of the public, the Authority may, without giving [~~the responsible person who lodged the prospectus or profile statement~~]

(8) An interim stop order shall, unless revoked, be in force —

- (a) in a case where —
  - (i) it is served during a hearing under subsection (3); or
  - (ii) a hearing under subsection (3) is commenced while it is in force

until the Authority makes an order under subsection (1) or (2); or

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

### Proposed Amendment

the person making the offer of units in the collective investment scheme

### Existing Provision

(9) Subsection (4) shall not apply where only an interim stop order has been served.

(10) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (7) 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.

(11) ~~[Any responsible person for a collective investment scheme]~~ who contravenes subsection (4), or any direction issued to him under that subsection, 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.

### Proposed Amendment

#### **Lodging supplementary document or replacement document**

**298.** —(1) If, after a prospectus or profile statement is registered but before the close of the offer ~~[or invitation]~~, or the expiration of 12 months from the date of registration of the prospectus by the Authority, whichever is earlier, ~~[the responsible person for a collective investment scheme]~~ becomes aware of —

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



Any person



the person making the offer

**Existing Provision**

(b) an omission from the prospectus or profile statement of any information that should have been included in it by requirements prescribed under section 296; 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 under this Act to be included in the prospectus or 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 responsible person~~ for the scheme 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.

the person

(2) If, after a prospectus or profile statement is registered but before the close of an offer ~~or invitation~~, or the expiration of 12 months from the registration of the prospectus by the Authority, whichever is earlier, ~~the responsible person for a collective investment scheme~~ wishes to update any information in a prospectus or profile statement and he declares in writing to the Authority that none of the situations set out in subsection (1) apply at that time, ~~the responsible person~~ may lodge a supplementary or replacement document with the Authority.

the person making the offer

the person

(3) At the beginning of a supplementary document, there shall be —

(a) a statement that it is a supplementary prospectus or a

**Proposed Amendment**

### Existing Provision

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.

(4) 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.

(5) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

~~[(6) The responsible person for a collective investment scheme which lodges a supplementary document under subsection (1) shall take reasonable steps to inform potential investors of such lodgment and make available the supplementary document to them.]~~

### Proposed Amendment

(6) The person making the offer of units in a collective investment scheme shall take reasonable steps to -

(a) inform potential investors of the lodgment of any supplementary document or replacement document under subsection (1); and

(b) make available to them the supplementary document or replacement document.





### Existing Provision

(7) For the purposes of the application of this Division to events that occur after the lodgment of a 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.

~~[(8) The responsible person for a collective investment scheme which lodges a replacement document under subsection (1) shall take reasonable steps to inform potential investors of such lodgment and make available the replacement document to them.]~~

(9) 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.

~~[(10) Where applications have been made under the original prospectus or profile statement for units in a collective investment scheme prior to the lodgment of a supplementary document or~~

### Proposed Amendment

### Existing Provision

~~replacement document under subsection (1), the responsible person for the scheme shall give the applicants and all participants of the scheme the supplementary document or replacement document, as the case may be, within 7 days from the date of lodgment of the supplementary document or replacement document.]~~

(11) Any person who contravenes subsection (3), (4), (5), (6) or (8) 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.

(12) Any person who contravenes subsection (10) 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.

### **Restrictions on advertisements, etc.**

**300.** —(1) If a prospectus is required for an offer [~~or invitation~~], or intended offer [~~or invitation~~], of units in a collective investment scheme or proposed collective investment scheme [~~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 —

### Proposed Amendment

(10) Where, prior to the lodgment of the supplementary document or replacement document under subsection (1), applications have been made under the original prospectus or profile statement for units in a collective investment scheme, the person making the offer of units in the scheme shall —

(a) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be; or

(b) give the applicants the supplementary document or replacement document, as the case may be, within 7 days from the date of lodgment of the supplementary document or replacement document.

### Existing Provision

- (i) directly or indirectly refers to the offer [~~or invitation~~] or intended offer [~~or invitation~~]; or
- (ii) is reasonably likely to induce people to subscribe for or purchase the units,

unless the advertisement or publication is authorised by this section [~~or complies with such requirements as may be prescribed~~].

~~[(2) In determining whether a statement —~~

~~(a) indirectly refers to an offer or invitation, or intended offer or invitation; or~~

~~(b) is reasonably likely to induce people to subscribe for or purchase the units in a collective investment scheme,~~

~~regard shall be had to whether the statement is likely to encourage investment decisions to be made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.]~~

### Proposed Amendment

(2) In determining whether a statement —

- (a) indirectly refers to an offer or intended offer; or
- (b) is reasonably likely to induce persons to subscribe for or purchase units in a collective investment scheme,

regard shall be had to whether the statement —

- (i) forms part of the normal advertising of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and
- (ii) is likely to encourage investment decisions to be made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(2A) Notwithstanding subsection (3A), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, persons specified in section 305(1) and persons to whom an offer referred to in section 305(1A) is made without contravening subsection (1), if —

(a) the front page of the preliminary document contains -

- (i) the following statement:

## Existing Provision

## Proposed Amendment

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Authority.”;

- (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and
- (iii) a statement in bold lettering that no offer shall be made or received, and no agreement shall be made, on the basis of the preliminary document, to purchase or subscribe for any units in the collective investment scheme to which the preliminary document relates;

- (b)* the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of units in the collective investment scheme to which the preliminary document relates, or the acceptance of such an offer by any person; and
- (c)* when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

(2B) Notwithstanding subsection (3A), a person does not contravene subsection (1) by presenting oral or written material, on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, persons specified in section 305(1) and persons to whom an offer referred to in section 305(1A) is made before a prospectus or profile statement is registered by the Authority.



## Existing Provision

(3) 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).

## Proposed Amendment

under section 296

(3A) Before a prospectus or profile statement is registered, an advertisement or publication does not contravene subsection (1) if it contains only the following:

- (a) a statement that identifies the responsible person for the collective investment scheme and, where the collective investment scheme is not a corporation, the name of the collective collective investment scheme;
- (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
- (c) a statement that anyone wishing to acquire the units in the collective investment scheme will need to make an application in the manner set out in the prospectus or profile statement;
- (d) a statement on how to arrange to obtain a copy of the prospectus or profile statement; and
- (e) the investment focus of the collective investment scheme.

(3B) To satisfy subsection (3A), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the information referred to in paragraphs (d) and (e).

**Existing Provision**

**Proposed Amendment**

← (3C) After a prospectus or profile statement is registered with the Authority, an advertisement or publication does not contravene subsection (1) if it complies with such requirements as may be prescribed by the Authority.

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

~~[(a) consists solely of a notice or report of a meeting of the participants of the collective investment scheme;]~~

← (a) consists solely of —  
(i) a notice or report to a securities exchange, futures exchange or recognised securities exchange; or  
(ii) a disclosure or publication required under this Act or any listing rules of such securities exchange, futures exchange or recognised securities exchange,  
made by any person about its affairs, provided that the notice, report, disclosure or publication complies with such requirements as may be prescribed;  
← (aa) consists solely of a notice or report of a meeting of the participants of the collective investment scheme or a general meeting of the person making the offer, the responsible person or any corporation;

**Existing Provision**

**Proposed Amendment**

(b) consists solely of a report about the collective investment scheme or proposed collective investment scheme that is [~~prepared in accordance with~~] the Code on Collective Investment Schemes;

issued pursuant to this Act and

(c) 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) or (b); or]~~

(ii) a notice or report referred to in paragraph (a), (aa) or (b);

(d) is a report about the units in the collective investment scheme or proposed collective investment scheme published by someone who is not —

(i) the responsible person for the scheme, its agent or distributor;

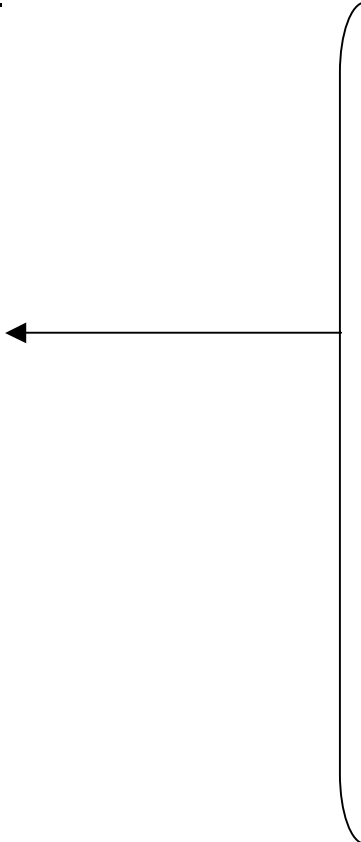
(ii) a person who has an interest in the success of the issue or sale of the units; or

(iii) acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i) or (ii) [-]

;

## Existing Provision

## Proposed Amendment

- 
- (f) is a report on the units in the collective investment scheme, published and delivered to any institutional investor not later than 14 days prior to the date of lodgment of the prospectus, provided that—
- (i) the offer is made in one or more other countries;
  - (ii) the publication and delivery of such report in that other country or any one of those other countries do not infringe any law, code or other requirement of that country; and
  - (ii) the report and the manner of its publication and delivery in Singapore comply with such other requirements as may be prescribed by the Authority;
- (g) is a publication made by the person making the offer or the responsible person for the scheme solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in a publication referred to in paragraph (c) or a publication (which is not an advertisement) referred to in subsection (5), provided that the publication does not contain information other than information contained in the prospectus.

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

(a) he publishes an advertisement or publication in the ordinary course of a business of —

(i) publishing a newspaper, periodical or magazine; or



### Existing Provision

(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).

(6) Subsection (4) (c) and (d) 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.

(7) 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.

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

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

(10) Any person who contravenes any of the conditions under subsection (9) 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.

### Proposed Amendment

and any person who knowingly authorised or permitted the publication or dissemination in contravention of subsection (1)

## Existing Provision

### [Applicability of provisions relating to shares

~~302. Sections 247, 249, 252, 253, 254 and 255 shall, with such modifications and adaptations as are necessary, apply to an offer or invitation to the public to subscribe for or purchase units in a collective investment scheme and have effect accordingly as if~~ ←

~~(a) the units were shares in respect of which an offer or invitation were made to the public for subscription or purchase; and~~

~~(b) the persons accepting any offer or invitation to subscribe for or purchase any units were subscribers for or purchasers of shares, respectively.]~~

## Proposed Amendment

### Application of provisions relating to securities

302.—(1) Sections 247, 249, 249A, 252, 253, 254 and 255 shall with the necessary modifications apply in relation to an offer of units in a collective investment scheme as they apply in relation to an offer of securities in Division 1 of this Part.

(2) For the purposes of subsection (1), references in those sections to securities and to a person subscribing for, purchasing or acquiring securities shall be read as references to units in a collective investment scheme and to a person subscribing for, purchasing or acquiring such units, respectively.

(3) For the purposes of subsection (1), references in sections 253 and 254 to an offer referred to in section 280 shall be read as a reference to an offer referred to in section 305D.

## Existing Provision

## Proposed Amendment

### Issue or transfer for no consideration

302A.-(1) Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (other than an offer of an option to subscribe for or purchase such units) if no consideration is or will be given for the issue or transfer of the units.

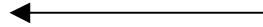
(2) Subdivisions (2) and (3) of this Division shall not apply to an offer of an option to subscribe for or purchase units in a collective investment scheme if–

- (a) no consideration is or will be given for the issue or transfer of the option; and
- (b) no consideration is or will be given for the underlying units on the exercise of the option.

### Small offers

302B.-(1) Subdivisions (2) and (3) of this Division shall not apply to personal offers of units in a collective investment scheme by a person if –

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed–
  - (i) \$5 million (or its equivalent in a foreign currency); or
  - (ii) such other amount as the Authority may, by order published in the *Gazette*, specify in substitution for the amount specified in sub-paragraph (i);
- (b) the person making the offer notifies every person to whom



## Existing Provision

## Proposed Amendment

he makes the offer that -

- (i) the offer is made in reliance on the exemption in this subsection; and
- (ii) the units being offered shall not be subsequently sold to any person other than persons specified in subsection (7)(a), unless such subsequent offer is made in compliance with Subdivisions (2) and (3) of this Division.

(1A) For the purposes of subsection (1)(b), the person making the offer is deemed to have notified every person to whom he makes the offer if such notification is contained on the first page of any notice, circular, material, advertisement, publication or other document issued in connection with the offer.

(2) In subsection (1), a personal offer of units in a collective investment scheme is one that—

- (a) may only be accepted by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in that offer, having regard to--
  - (i) previous contact between the person making the offer and that person;
  - (ii) some professional or other connection between the person making the offer and that person; or
  - (iii) statements or actions by that person that indicate that he is interested in offers of that kind.

(3) In determining the amount raised by an offer of units in a

## Existing Provision

## Proposed Amendment

collective investment scheme, the following shall be included:

- (a) the amount payable for the units at the time when they are issued;
- (b) in the case of an option, any amount payable on the exercise of the option.

(4) In determining whether the amount raised by an offer does not exceed the applicable amount specified in subsection (1)(a), any amount raised by the person making the offer by a previous offer of units in the same collective investment scheme shall be included if the second-mentioned offer—

- (a) was made within the period of 12 months ending with the date on which the first-mentioned offer is made; and
- (b) is one to which Subdivisions (2) and (3) of this Division do not apply but only by virtue of this section.

(5) For purposes of this section, the Authority may determine in writing that an individual, an entity or a trust is closely related to the person making the offer of units in a collective investment scheme in reliance on the exemption in subsection (1) (referred to in this subsection as the exempt offer), in which case, any amount raised from

=

- (a) a previous offer of units made by such individual, entity or trust; or
- (b) a previous offer of securities or interests in such entity or trust made by the person making the offer,

shall be included in determining whether the exempt offer exceeds the applicable amount specified in subsection (1)(a) if such previous offer



## Existing Provision

## Proposed Amendment

=

(i) was made within the period of 12 months ending with the date on which the exempt offer is made; and

(ii) is one to which Subdivisions (2) and (3) of this Division do not apply but only by virtue of this section.

(6) For the purpose of subsection (5) –

(a) “interest”, in relation to a unit in a trust, means any right or interest, whether legal or equitable, in the unit of the trust, by whatever name called, and includes any option to acquire any such right or interest in the unit of the trust; and

(b) “unit”, in relation to a trust, means a right or financial stake of a unitholder in the trust; and

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

(7) For the purposes of this section, an offer of securities made by a person as an agent of another person shall be treated as an offer made by that other person.

(8) Subdivisions (2) and (3) of this Division shall not apply to an offer by any person to sell any units in a collective investment scheme acquired from an offer made in reliance on the exemption in subsection (1) (referred to in this subsection as an initial offer) to any other person if and only if —

(a) the offer is one that may only be accepted by the person to



**Existing Provision**

**Proposed Amendment**

whom it is made;

(b) the offer is one that is made -

(i) to a person who is likely to be interested in the offer having regard to—

(A) previous contact before the date of the offer between the person making the initial offer and that person;

(B) some professional or other connection established before that date between the person making the initial offer and that person;

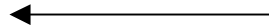
(C) statements or actions made before that date by that person that indicate that he is interested in offers of that kind; or

(ii) in reliance on an exemption under section 302A, 304 or 305; and

(c) the first-mentioned person provides a notification in accordance with paragraph (b) of subsection 1, and the reference in that paragraph to the date shall refer to the date the securities were acquired under the initial offer.

**Private placements**

302C.-(1) Subdivisions (2) and (3) of this Division shall not apply to offers of units in a collective investment scheme that are made to no more than –



## Existing Provision

## Proposed Amendment

(a) 20 persons; or

(b) such other number of persons as the Authority may, by order published in the *Gazette*, specify in substitution for the number specified in sub-paragraph (a).

(2) In determining whether an offer of units in a collective investment scheme is made to no more than the applicable number of persons specified in subsection (1), persons (other than those to whom the first-mentioned offer is made) to whom any other offer of units in the same collective investment scheme made by the same person shall be included if the second-mentioned offer –

(a) was made within the period of 12 months ending with the date on which the first-mentioned offer is made; and

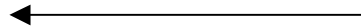
(b) is one to which Subdivisions (2) and (3) of this Division do not apply but only by virtue of this section.

(3) For purposes of this section, the Authority may determine in writing that an individual, an entity or a trust is closely related provide us with general power and to the person making the offer of units in a collective investment scheme in reliance on the exemption in subsection (1) (referred to in this subsection as the exempt offer), in which case, the persons to whom -

(a) a previous offer of units made by such individual, entity or trust; or

(b) a previous offer of securities or interests in such entity or trust made by the person making the offer;

shall be included in determining whether the exempt offer is made to no more than the applicable number of persons specified in subsection





**Existing Provision**

**Proposed Amendment**

(1) if such previous offer –

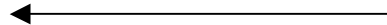
- (i) was made within the period of 12 months ending with the date on which the exempt offer is made; and
- (ii) is one to which Subdivisions (2) and (3) of this Division do not apply but only by virtue of this section.

(4) For the purpose of subsection (3) –

- (a) “interest”, in relation to a unit in a trust, means any right or interest, whether legal or equitable, in the unit of the trust, by whatever name called, and includes any option to acquire any such right or interest in the unit of the trust; and
- (b) “unit”, in relation to a trust, means a right or financial stake of a unitholder in the trust; and
- (c) “unitholder” means a person who holds units in a trust (whether as a contributor to the trust or as a person who acquired such units from another person who is or was a unitholder in the trust).

(5) For the purposes of sub-section (1)–

- (a) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units which are the subject of the offer;
- (b) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or



## Existing Provision

## Proposed Amendment

trust is formed primarily for the purpose of acquiring the units which are the subject of the offer;

(c) an offer of units in a collective investment scheme to 2 or more persons who will own the units acquired as joint owners shall be treated as an offer to a single person;

(d) offers of units in a collective investment scheme made by a person as an agent of another person shall be treated as offers made by that other person; and

(e) where—

(i) an offer of units in a collective unit scheme is made to a person in reliance on the exemption under subsection (1) with a view to those securities being subsequently offered for sale to another person; and

(ii) that subsequent offer –

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under section 305D or subsection (1),

both persons shall be included for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in that subsection.

(6) For the purposes of subsection (5)(e), an offer of units in a collective investment scheme to a person shall, unless the contrary is proved, be

### Existing Provision

#### ~~[Offer or invitation made under certain circumstances~~

~~303. Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, if it is made in relation to units in a collective investment scheme that have been previously issued and that are quoted, or listed for quotation, on a securities exchange.]~~

### Proposed Amendment

deemed to have been made with a view to them being subsequently offered for sale to another person if it is shown that -

- (a) the subsequent offer is made within 6 months after these units were acquired under the initial offer; or
- (b) at the date of the making of the subsequent offer, the whole consideration to be received by the person making the initial offer in respect of the units had not been so received.

#### Offer or invitation made under certain circumstances

303. Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme if -

- (a) it is made in relation to units in a collective investment scheme that have been previously issued and that are quoted, or listed for quotation, on a securities exchange; or
- (b) it is an offer to enter into an underwriting agreement relating to units in a collective investment scheme.

### Existing Provision

#### [Offer or invitation made to certain institutions or persons

~~304. Subdivisions (2) and (3) of this Division shall not apply to an offer to the public of units in a collective investment scheme for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, 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;~~

### Proposed Amendment

#### Offer made to institutional investors

304. Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme made to an institutional investor.

### Existing Provision

- ~~(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.]~~

### Proposed Amendment

#### ~~[First sale of units acquired under exemption in section 304~~

~~**304A.**— (1) Subject to subsection (2), where units in a collective investment scheme initially acquired pursuant to an exemption in section 304 are first sold to any person other than one specified in that section, the offer for sale of, or invitation to purchase, those units made to that person shall be regarded as an offer or invitation to the public in respect of units in a collective investment scheme.~~

~~(2) Where units in a collective investment scheme initially acquired pursuant to an exemption in section 304 are first sold to any sophisticated investor, section 305 shall apply to the offer for sale of, or invitation to purchase, those units made to that sophisticated investor as if it were an offer to the public of units in a collective investment scheme for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, made to a sophisticated investor.~~

~~(3) In subsection (2), “sophisticated investor” has the same~~

#### First sale of units acquired pursuant to section 304

**304A.** Where units in a collective investment scheme acquired in reliance on an exemption in section 304 are first sold to any person other than the ones specified in that section, then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale even if it would otherwise (but for this section) have been exempted from those Subdivisions (or either of them) by virtue of section 302B, 302C, 303, 305B or 305C.

## Existing Provision

meaning as in section 305.]

### Offer [or invitation made to sophisticated investors]

**305.** — [~~(1) Where an offer to the public of units in a collective investment scheme for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, is made to a sophisticated investor (referred to in this section as a restricted scheme) —~~

~~(a) in the case of a restricted scheme which is constituted in Singapore, Subdivisions (2) and (3) of this Division shall not apply, except to such extent and with such modifications as may be prescribed; and~~

~~(b) in the case of a restricted scheme which is constituted outside Singapore, Subdivisions (2) and (3) of this Division shall not apply, except to such extent and with such modifications as may be prescribed,~~

if —

~~(i) 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;~~

~~(ii) 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~~

## Proposed Amendment

### made to accredited investors and certain other investors

(1) Except to such extent and with such modifications as may be prescribed, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (referred to in this section as a restricted scheme) —

(a) made to an accredited investor;

(b) made to a corporation whose sole business is to hold investments and whose entire share capital is owned by one or more individuals each of whom is an accredited investor;

(c) where the person making the offer is not an individual, made to an officer or equivalent person of the person making the offer or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

(d) where the person making the offer is an individual, made to a spouse, parent, brother, sister, son or daughter of that person,

if the conditions in subsection (1B) are satisfied.

(1A) Except to such extent and with such modifications as may be prescribed, subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme to a person who acquires the units as principal if the offer is on terms that they may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash, by exchange of securities or other

### Existing Provision

~~licence to deal in securities or an exempt person in respect of dealing in securities; and~~

~~(iii) the offer or invitation is made in or accompanied by an information memorandum which —~~

~~(A) contains the following statement:~~

~~“The offer or invitation which is the subject of this information memorandum is only allowed to be made to sophisticated investors and not the retail public. Moreover, this information memorandum is not a prospectus as defined in the Securities and Futures Act. Accordingly statutory liability under that Act in relation to the content of prospectuses would not apply. You should consider carefully whether the investment is suitable for you.”; and~~

~~(B) states the particulars referred to in subsection (2) in respect of the restricted scheme.]~~



### Proposed Amendment

assets, and if the conditions in subsection (1B) are satisfied.

(1B) The conditions referred to in subsections (1) and (1A) are:

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

“The offer which is the subject of this information memorandum is not allowed to be made to the retail public. This information memorandum is not a prospectus as defined in the Securities and Futures Act. Accordingly statutory liability under that Act in relation to the content of prospectuses would not apply. You should consider carefully whether the investment is suitable for you.”; and

(ii) states the particulars in respect of the scheme.

**Existing Provision**

**Proposed Amendment**

(2) The particulars referred to in [~~subsection (1) (iii) (B)~~] to be included in the information memorandum are —

subsection (1B)(c)(ii)

(a) the investment objectives, focus and approach of and risks of subscribing for or purchasing units in the restricted scheme;

(b) whether the offer [~~or invitation in respect~~] of units in the restricted scheme is regulated by any financial supervisory authority and if so, the title and jurisdiction of the legislation under which the restricted scheme is regulated and the name and contact details of the authority;

(c) in the case of a restricted scheme [~~referred to in subsection (1) (a)~~] the name and place of incorporation of the manager for the scheme and the trustee for the scheme, where applicable;

which is constituted in Singapore,

(d) in the case of a restricted scheme [~~referred to in subsection (1) (b) which~~] —

which is constituted outside Singapore

(i) is [~~constituted as~~] a corporation —

(A) its place of incorporation and business address;  
and

(B) the name and place of incorporation or registration of the manager for the restricted scheme and the trustee or custodian for the restricted scheme, where applicable;

(ii) is not [~~constituted as~~] a corporation, the name and place of incorporation or registration of the manager for the restricted scheme and the trustee or custodian for the restricted scheme, where applicable;



### Existing Provision

(e) whether the manager for the restricted scheme and the trustee for the restricted scheme, where applicable, are regulated by any financial supervisory authority and if so, the name and contact details of the authority.

(3) In this section —

"advertisement" means —

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

that is published in connection with [~~an offer or invitation in respect of units in a collective investment scheme but does not include an information memorandum~~];

an offer of units in a collective investment scheme but does not include – (i) an information memorandum; or (ii) an announcement made by an entity listed on a securities exchange or a recognised securities exchange pursuant to any requirement of that securities exchange or recognised securities exchange

"information memorandum" means a document —

- (a) purporting to describe a collective investment scheme; 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 units in the scheme which are the subject of an offer [~~or invitation~~];

by investors specified in subsection (1) or to whom an offer referred to in subsection (1A) is made

["sophisticated investor" means —

### Existing Provision

~~(a) a person who acquires units in a collective investment scheme, 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 units, 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.]~~

### Proposed Amendment

### Existing Provision

(4) 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 units in a collective investment scheme under section 304 or this section for his own account without complying with such requirement shall be deemed to be an exempt person even though he does not comply with that requirement.

(5) 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 (3)].

subsection (1A)

### [First sale of units acquired under exemption in section 305

~~305A. Where units in a collective investment scheme initially acquired pursuant to an exemption in section 305 are first sold to any person other than one specified in section 304 or 305, the offer for sale of, or invitation to purchase, those units made to that person shall be regarded as an offer or invitation to the public in respect of units in a collective investment scheme.]~~

### First sale of units acquired pursuant to section 305

305A.-(1) Where units in a collective investment scheme acquired in reliance on the exemption in section 305 are first sold to any person other than an institutional investor, a person specified in section 305(1) or a person to whom an offer referred to in section 305(1A) is made, then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale even if it would otherwise (but for this section) have been exempted from those Subdivisions (or either of them) by virtue of section 302B, 302C, 303, 305B or 305C.

(2) Securities of a corporation ----

(a) whose sole business is to hold investments; and

(b) whose entire share capital is owned by 1 or more individuals each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has

**Existing Provision**

**Proposed Amendment**

acquired any units in a collective investment scheme issued in reliance on the exemption under section 305, unless –

- (i) the offer resulting in transfer is only made to institutional investors, persons specified in section 305(1) or persons to whom an offer referred to in section 305(1A) is made;
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

**Securities exchange offer**

305B.-(1) Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme that is in respect of units that are, or are to be, uniform in all respects with units previously issued and listed for quotation on a securities exchange where –

- (a) an offer information statement which complies with such form and content as may be prescribed by the Authority is lodged with the Authority and the securities exchange, and
- (b) the offer is made in or accompanied by the offer information statement referred to in (a).

(2) Subsection (1) shall apply only for a period of 6 months from the date of lodgment of the offer information statement.

(3) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions

## Existing Provision

## Proposed Amendment

or restrictions as may be determined by the Authority.

(4) For the purposes of this section, units shall be deemed to be uniform in all respects with units previously issued notwithstanding that they do not carry the same rights to dividends as the latter during the 12 months immediately following the issue.

(5) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as may be prescribed shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

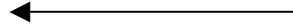
(6) For the purposes of subsection (5) --

(a) a reference in section 249 and 249A to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment; and

(b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus shall be read as a reference to any information prescribed under subsection (1)(a).

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

(8) Where the written consent of an issue manager or underwriter to the issue of an offer information statement is required to be given under section 249A (as applied in relation to that statement under



## Existing Provision

## Proposed Amendment

subsection (5)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

### Renounceable rights issue

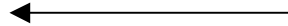
305C.-(1) Subject to subsection (2), Subdivision (3) shall not apply to an offer of units in a collective investment scheme by means of a rights issue which is renounceable in favour of persons other than existing participants of that collective investment scheme where--

- (a) an application has been or will be made for permission for the units to be listed for quotation on any securities exchange;
- (b) an offer information statement which complies with such form and content as may be prescribed by the Authority is lodged with the Authority; and
- (c) the offer is made in or accompanied by the offer information statement referred to in paragraph (b).

(3) Subsection (1) shall apply only for a period of 6 months from the date of lodgment of the offer information statement.

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

(5) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as may be prescribed shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.



## Existing Provision

## Proposed Amendment

(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; and
- (b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus shall be read as a reference to any information prescribed under subsection (1)(b).

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

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

### Offer using ATM and other electronic means

305D.-(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of units in a collective investment scheme using –

- (a) any automated teller machine; or
- (b) such other electronic means as may be prescribed by the

## Existing Provision

## Proposed Amendment

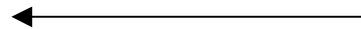
Authority,

is exempted from the requirement under section 296(1)(a) or, where applicable, section 296(2) that the offer be made in or accompanied by a prospectus or, where applicable, a profile statement, in respect of the offer.

(2) For the avoidance of doubt, a prospectus or, where applicable, profile statement must still be prepared and issued in respect of the offer referred to in subsection (1) that complies with section 296(1)(a)(i), (ii) and (iii) or (2)(a) to (d), as the case may be.

(3) Subsection (1) applies only if, before enabling the submission of an application to subscribe for or purchase units, the automated teller machine or prescribed electronic means indicates to the prospective subscriber or buyer –

- (a) how a copy of the prospectus or, where applicable, profile statement in respect of the offer can be obtained; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application.



### **Transactions under exempted offers [~~or invitations~~] subject to Division 2 of Part XII of Companies Act and Part XII of this Act**

**308.** 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



**Existing Provision**

or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

**Proposed Amendment**

## Existing Provision

### **Prohibition of use of certain titles**

314. —(1) Except with the written approval of the Authority, no person, other than a securities exchange, shall —

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

~~(2) Except with the written approval of the Authority, no person, other than a futures exchange, shall —~~

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

~~(3) Except with the written approval of the Authority, no person, other than a clearing house, shall —~~

- ~~(a) — take or use, or have attached to or exhibited at any place, the title or description “clearing house” in any language; or~~
- ~~(b) — take or use, or have attached to or exhibited at any place, any title or description which resembles the titles or descriptions specified in paragraph (a) or so closely~~

## Proposed Amendment

### Existing Provision

resembles such titles or descriptions as to be calculated to deceive.

~~(4) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine of \$2,000 for every day or part thereof during which the offence continues after conviction.~~

### **Secrecy**

~~315.—(1) Every exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5 (3) or 6 (3) and clearing house, and every officer or employee thereof, shall preserve, and aid in preserving, secrecy with respect to all matters of the exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5 (3) or 6 (3) or clearing house, as the case may be.~~

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

- ~~(a) to the disclosure of any information which is authorised by the Authority to be disclosed or furnished;~~
- ~~(b) to the disclosure of information for the purpose of any legal proceedings brought under this Act or any other written law, or for the purpose of any report of any such proceedings, except that in relation to the position of a holder of a capital markets services licence to carry on business to deal in securities or trade in futures contracts or a customer of such holder, such proceedings may, if the court, on its own motion or on~~

### Proposed Amendment

### **Existing Provision**

~~the application of a party to the proceedings, so orders, be held in camera and the information shall be secret as between the court and the parties to the proceedings; or~~

~~(c) to the disclosure of information for such other purposes, or in such other circumstances, as the Authority may prescribe.~~

~~(3) Any person who contravenes subsection (1), directly or indirectly, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.~~

### **Proposed Amendment**

Existing Provision

Proposed Amendment

**FIRST SCHEDULE**

**FIRST SCHEDULE**

Section 2

Section 2

**MARKETS**

**PART I**  
**MARKET**

In this Act —

~~"futures market" means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts (whether through that place or facility or otherwise), but does not include a place or facility used by only one person —~~

~~(a) to regularly make offers or invitations to sell, purchase or exchange futures contracts, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts; or~~

~~(b) to regularly accept offers to sell, purchase or exchange futures contracts;~~

○

**Definition of market**

1. In this Act, "market" means a securities market or futures market.

**Definition of futures market**

2.(1) In this Act, "futures market" means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts (whether through that place or facility or otherwise).

(2) For the purposes of this Act, "futures market" does not include a place or facility used by only one person —

(a) to regularly make offers or invitations to sell,

### Existing Provision

~~"securities market" means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange issued securities are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities (whether through that place or facility or otherwise) but does not include a place or facility used by only one person —~~

~~(a) to regularly make offers or invitations to sell, purchase or exchange issued securities, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities; or~~

~~(b) to regularly accept offers to sell, purchase or exchange issued securities.~~

### Proposed Amendment

purchase or exchange futures contracts; or  
(b) to regularly accept offers to sell, purchase or exchange futures contracts.

### Definition of securities market

3.(1) In this Act, "securities market" means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange issued securities or prescribed securities, are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities or prescribed securities (whether through that place or facility or otherwise).

(2) For the purposes of this Act, "securities market" does not include —

(a) a place or facility used by only one person to regularly make offers or invitations to sell, purchase or exchange securities; or

(b) a place or facility used by only one person to regularly accept offers to sell, purchase or exchange securities.

Existing Provision

Proposed Amendment

**PART II**  
**CLEARING FACILITY**

**Definition of Clearing Facility**

In this Act –

“clearing facility” means a facility for the clearing or settlement of transactions in securities or futures contracts; and

“clearing or settlement” means an arrangement, process, mechanism or service, provided by a person in respect of transactions in securities or futures contracts, by which –

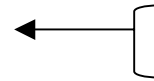
- (a) information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;
- (b) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;
- (c) the obligations of parties under those transactions are calculated, whether such calculations include multilateral netting arrangements or not; or
- (d) parties to those transactions meet their obligations under such transactions, including the obligation to deliver, the transfer of funds or the transfer of title to



**Existing Provision**

**Proposed Amendment**

securities between parties.



but does not include the back office operations of a party to these transaction.



**Existing Provision**

**Proposed Amendment**

**SECOND SCHEDULE**

Section 2

**REGULATED ACTIVITIES**

**PART I**

**TYPES OF REGULATED ACTIVITIES**

The following are regulated activities for the purposes of this Act:

- (a) dealing in securities;
- (b) trading in futures contracts;
- (c) leveraged foreign exchange trading;
- (d) advising on corporate finance;
- (e) fund management;
- (f) securities financing;
- (g) providing custodial services for securities.

**PART II**

**INTERPRETATION**

In this Schedule —

### Existing Provision

"agreement" includes arrangement;

"advising on corporate finance" means giving advice —

- (a) to any entity concerning compliance with or in respect of laws or regulatory requirements (including the listing rules of a securities exchange) relating to the raising of funds by any entity;
- (b) to the person making an offer or invitation to the public —
  - (i) to subscribe for or purchase securities; or
  - (ii) to sell or otherwise dispose of securities, concerning that offer or invitation; or
- (c) concerning the arrangement, reconstruction or take-over of a corporation or any of its assets or liabilities;

"dealing in securities" means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities;

"financial institution" means —

- (a) any bank licensed under the Banking Act (Cap. 19);
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); or
- (c) any finance company licensed under the Finance

### Proposed Amendment

### Existing Provision

Companies Act (Cap. 108);

"foreign exchange trading" means the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement the effect of which is that —

- (a) a party agrees to exchange currency at an agreed rate of exchange with another party whether the currency exchange is effected at the same time or at a specified future time and whether by way of delivery of an amount of currency for another currency, by way of crediting the account of the other party with an amount of another currency, by way of settlement or set-off between 2 or more persons or otherwise; or
- (b) a party agrees to settle in any manner with another party the difference between the value of any currency index agreed at the time of the making of the contract or arrangement and at a specified future time,

but does not include any act performed for or in connection with a contract or an arrangement which is a futures contract or such a proposed contract or proposed arrangement;

"fund management" means undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) —

- (a) the management of a portfolio of securities or futures contracts; or

### Proposed Amendment

**Existing Provision**

- (b) foreign exchange trading or leveraged foreign exchange trading for the purpose of managing the customer's funds;

**Proposed Amendment**

“futures contract” means —

(a) a contract the effect of which is that —

(i) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time pursuant to terms and conditions set out in the business rules or practices of a futures market; or

(ii) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the business rules or practices of a futures market at which the contract is made,

and includes a futures option transaction; or

(b) such other contract or classes of contracts as the Authority may prescribe;

"leveraged foreign exchange trading" means —

- (a) foreign exchange trading on a margin basis whereby a person undertakes, as determined by the terms and conditions of the foreign exchange trading contract or arrangement —
  - (i) to make an adjustment between himself and another person according to whether a currency is worth more or less, as the case may be, in relation to another currency, or according to whether a currency index rises or falls in value, as the case may be, in relation to an agreed value;
  - (ii) to pay an amount of money determined or to be determined by reference to the change in value of a currency

**Existing Provision**

in relation to another currency, or by reference to the change in value of a currency index in relation to an agreed value; or

(iii) to deliver to another person at an agreed future time an agreed amount of currency at an agreed price;

(b) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or

(c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person (whether on a discretionary basis or otherwise) to enter into any contract to facilitate an act of the description mentioned in paragraph (a) or (b),

but does not include any act performed for or in connection with a contract or an arrangement —

(i) arranged by a bank that is licensed under the Banking Act (Cap. 19) or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);

(ii) by any person belonging to such class of persons, or carrying on such class or description of business, as may be prescribed by the Authority; or

(iii) which is a futures contract,

**Proposed Amendment**

**Existing Provision**

or such a proposed contract or arrangement;

“offer” or “offering” includes invitation to treat;

“on a margin basis”, in relation to the definition of “leveraged foreign exchange trading”, means the first-mentioned person referred to in the definition of “leveraged foreign exchange trading” entering into the contract or arrangement referred to therein by providing to the offeror or his agent money, securities, property or other collateral which represents only a part of the value of the contract or arrangement to be entered into by him;

"providing custodial services for securities" means providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of securities of the customer and carries out one or more of the following functions for the customer:

- (a) settlement of transactions relating to the securities;
- (b) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the securities;
- (c) paying tax or other costs associated with the securities;
- (d) exercising rights, including without limitation voting rights, attached to or derived from the securities;
- (e) any other function necessary or incidental to the safeguarding or administration of the securities,

but does not include —

**Proposed Amendment**

**Existing Provision**

- (i) the activities of a corporation which is a Depository as defined in Division 7A of Part IV of the Companies Act (Cap. 50);
- (ii) the provision of services to a related corporation or connected person, so long as none of the securities is —
  - (A) held on trust for another person by the related corporation or connected person;
  - (B) held as a result of any custodial services provided by the related corporation or connected person to another person; or
  - (C) beneficially owned by any person other than the related corporation or connected person;
- (iii) the provision of services by a nominee corporation which are solely incidental to the business of a nominee corporation; or
- (iv) any other conduct as the Authority may prescribe;

"securities financing" means to directly or indirectly facilitate, by providing any credit facility, advance or loan —

- (a) the subscription for securities, or the purchase of securities listed or to be listed on a securities market or such other securities as the Authority may prescribe; and
- (b) where applicable, the continued holding of those securities,

whether or not those securities are pledged as security for the credit facility, advance or loan, but does not include the provision of any

**Proposed Amendment**

**Existing Provision**

**Proposed Amendment**

credit facility, advance or loan —

- (i) that forms part of an arrangement to underwrite or sub-underwrite securities;
- (ii) *Deleted by Act 16/2003, wef 22/12/2003.*
- (iii) to a holder of a capital markets services licence to deal in securities or provide securities financing, or a financial institution, to facilitate acquisitions or holdings of securities;
- (iv) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities;
- (v) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member; or
- (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities;

"trading in futures contracts" means (whether as principal or agent)

—

- (a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a futures contract; or
- (b) soliciting or accepting any order for, or otherwise dealing in, a futures contract.



**Existing Provision**

**Proposed Amendment**

**THIRD SCHEDULE**

Section 82 (2)

**SPECIFIED PERSONS**

1. Any company registered under the Trust Companies Act (Cap. 336) whose carrying on of the business in that regulated activity is solely incidental to its carrying on of the business for which it is registered under that Act.
2. Any public statutory corporation established under any Act in Singapore.
3. Any —
  - (a) advocate and solicitor, law corporation, Formal Law Alliance or Joint Law Venture which is approved or registered under the Legal Profession Act (Cap. 161); or
  - (b) public accountant who is registered under the Accountants Act (Cap. 2) or accounting corporation which is approved under that Act,whose carrying on of the business in that regulated activity is solely incidental to the practice of law or accounting, as the case may be.
4. The Official Assignee in exercising his powers under the Bankruptcy Act (Cap. 20).
5. The Public Trustee in exercising his powers under the Public Trustee Act (Cap. 260).

### Existing Provision

6. A person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager or judicial manager.

7. Any approved trustee for a collective investment scheme as defined in section 289 whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such approved trustee.

~~8.—(1) Any responsible person for a collective investment scheme as defined in section 283 that is authorised under section 286 or recognised under section 287, as the case may be, in respect of its dealing in securities, if such responsible person is also —~~

~~(a) a holder of a capital markets services licence for fund management; or~~

~~(b) an exempt person in respect of fund management.~~

~~(2) Any responsible person for a collective investment scheme as defined in section 283 that is authorised under section 286 or recognised under section 287, as the case may be, in respect of its dealing in securities which are units of that collective investment scheme, if the dealing is effected through any of the following persons:~~

~~(a) a holder of a capital markets services licence to deal in securities;~~

~~(b) an exempt person in respect of dealing in securities that are units of any collective investment scheme;~~

~~(c) a financial adviser licensed under the Financial Advisers~~

### Proposed Amendment

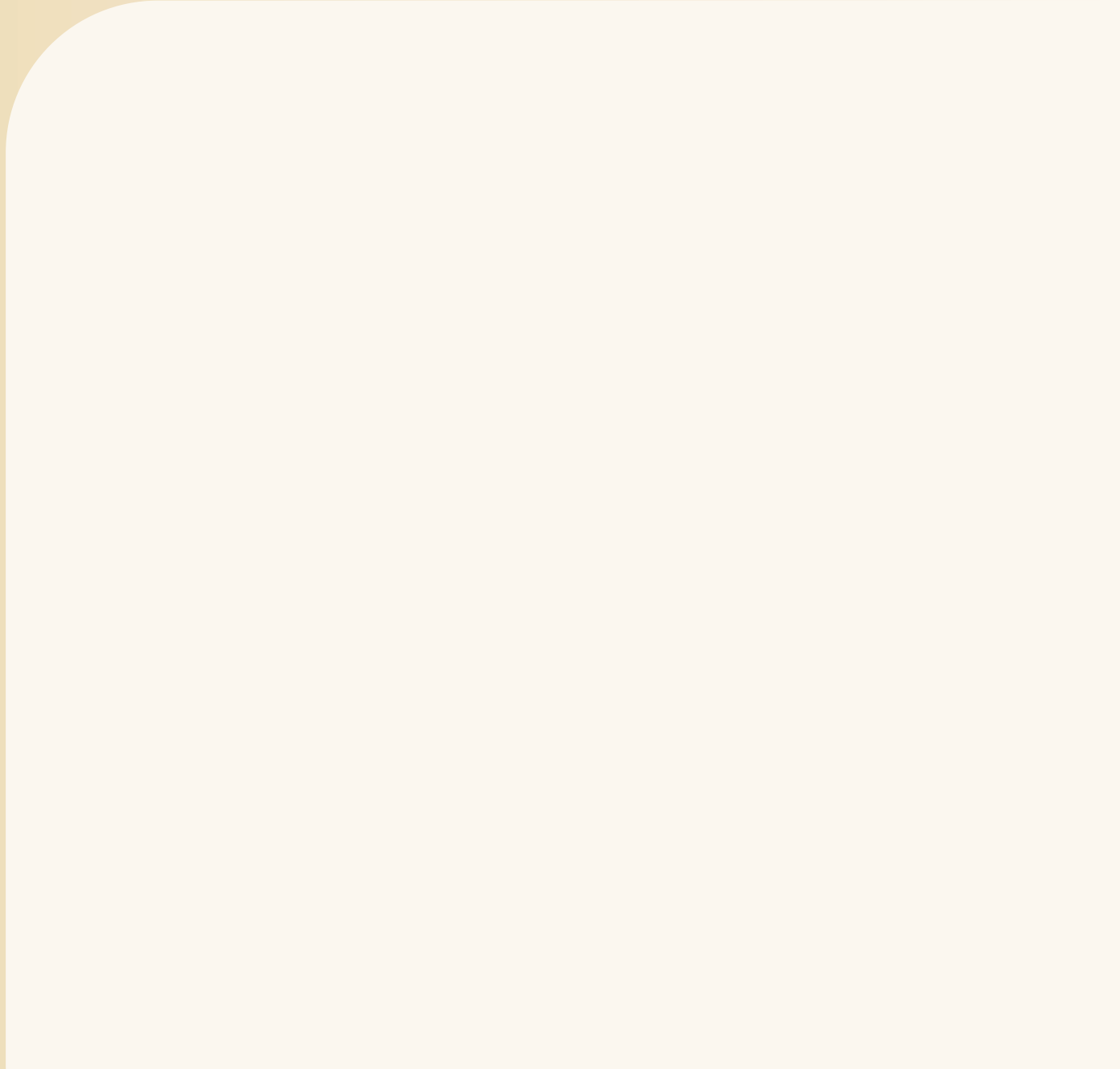
**Existing Provision**

~~Act (Cap. 110) to market collective investment schemes;  
or~~

~~(d) an exempt financial adviser as defined in the Financial  
Advisers Act in respect of marketing of collective  
investment schemes.~~

9. A foreign company whose carrying on of any regulated activity is effected under an arrangement between the foreign company (on the one hand) and its related corporation which is licensed under this Act or exempted under section 99 (1) (a), (b), (c) or (d) (on the other hand), where such arrangement is approved by the Authority.

**Proposed Amendment**



Monetary Authority of Singapore