

ANNEX 1A: DRAFT SECURITIES AND FUTURES
(AMENDMENT) BILL 2012
COMPARATIVE TABLE

COMPARATIVE TABLE OF PROVISIONS

AMENDMENTS TO THE SECURITIES AND FUTURES ACT

Existing Provision

Proposed Amendment

...

Interpretation

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

...

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

~~“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 issued are exclusively or primarily non redeemable at the election of the holders of units, but does not include an arrangement referred to in paragraph (a) of that definition—~~

~~(a) that is a trust;~~

~~(b) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and~~

Existing Provision

~~(c) all or any units of which are listed for quotation on a securities exchange;~~ ←

“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);

...

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

“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;

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“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 issued are exclusively or primarily non-redeemable at the election of the holders of units, but does not include –

- (a) an arrangement referred to in paragraph (a) of that definition –
 - (i) that is a trust;
 - (ii) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
 - (iii) all or any units of which are listed for quotation on a securities exchange; or
- (b) an arrangement referred to in paragraph (a) of that definition which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a closed-end fund by notice published in the *Gazette*;

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~~“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 regulated activity;~~

“providing credit rating services” has the meaning given to it in the Second Schedule;

...

Obligation to notify Authority of certain matters

38. A recognised market operator shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) any material change to the information provided by the recognised market operator in its application under section 7(1) or 11(1);
- ~~(b) any change of a director or the chief executive officer of the recognised market operator;~~
- (c) the recognised market operator becoming aware of a financial irregularity or other matter which in its opinion —
 - (i) may affect its ability to discharge its financial obligations; or

“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 is or will be, carrying out any regulated activity;

Existing Provision

- (ii) may affect the ability of a participant of the recognised market operator to meet its financial obligations to the recognised market operator;
- (d) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the recognised market operator.

...

Lapsing, revocation and suspension of capital markets services licence

95. —(1) A capital markets services licence shall lapse —

- (a) if the holder is wound up or otherwise dissolved, whether in Singapore or elsewhere; or
- (b) in the event of such other occurrence or in such other circumstances as may be prescribed.

(2) The Authority may revoke a capital markets services licence if —

- (a) there exists a ground on which the Authority may refuse an application under section 86;
- (b) the holder of the capital markets services licence fails or ceases to carry on business in all the

Proposed Amendment

(ba) the Authority has reason to believe that the holder has not acted in the best interests of its subscribers or customers;

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regulated activities for which it was licensed;

(c) the Authority has reason to believe that the holder, or any of its officers or employees, has not performed its or his duties efficiently, honestly or fairly;

(d) the holder has contravened any condition or restriction applicable in respect of its licence, any written direction issued to it by the Authority under this Act, or any provision in this Act;

(e) the Authority has reason to believe that the holder is carrying on business in any regulated activity for which it was licensed in a manner that is contrary to the interests of the public;

...

Lodgment of documents

99H. —(1) A principal who desires to appoint an individual as an appointed, provisional or temporary representative in respect of any type of regulated activity shall lodge the following documents with the Authority in such form and manner as the Authority may prescribe:

(a) a notice of intent by the principal to appoint the individual as an appointed, provisional or temporary

Proposed Amendment

(da) it appears to the Authority that the holder has failed to satisfy any of its obligations under or arising from this Act (including any written direction issued by the Authority under this Act);

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representative in respect of that type of regulated activity;

(b) a certificate by the principal that the individual is a fit and proper person to be an appointed, provisional or temporary representative in respect of that type of regulated activity; and

(c) in the case of a provisional or temporary representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

(2) Subject to section 99M, the Authority shall, upon receipt of the documents lodged in accordance with subsection (1), enter in the public register of representatives the name of the representative, whether he is an appointed, provisional or temporary representative, the type of regulated activity which he may carry on business in, and such other particulars as the Authority considers appropriate.

...

Lodgment and fees

99K. —(1) An individual shall, by the prescribed time, pay to the Authority such fee as may be prescribed by the Authority for the lodgment of documents under section 99H by his principal in relation to his appointment as an appointed,

Proposed Amendment

(1A) Subsection (1) shall not apply to the principal of an individual who is a provisional representative in respect of a type of regulated activity if:

(a) that individual has satisfied the examination requirements specified for that type of regulated activity; and

(b) the principal has informed the Authority of that fact in the prescribed form and manner under section 99E(5).

Existing Provision

provisional or temporary representative.

~~(2) An individual who is an appointed or provisional representative shall, by the prescribed time each year, pay such annual fee as may be prescribed by the Authority in relation to the retention of his name in the public register of representatives as an appointed or provisional representative.~~

(3) An individual who is a temporary representative shall, by the prescribed time, pay such fee as may be prescribed by the Authority in relation to the retention of his name in the public register of representatives as a temporary representative.

...

Power of Authority to refuse entry or revoke or suspend status of appointed, provisional or temporary representative

99M. —(1) Subject to regulations made under this Act, the Authority may refuse to enter the name and other particulars of an individual in the public register of representatives, refuse to enter an additional type of regulated activity for an appointed representative in that register, or revoke the status of an individual as an appointed, provisional or temporary representative if —

- (a) being an appointed, provisional or temporary representative, he fails or ceases to act as a representative in respect of all of the types of regulated activities that were notified to the

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(2) An individual who is an appointed or provisional representative in respect of a type of regulated activity shall, by the prescribed time each year, pay such annual fee for that type of regulated activity as may be prescribed by the Authority in relation to the retention of his name in the public register of representatives as an appointed or provisional representative in respect of that type or types of regulated activities.

Existing Provision

Authority as activities which he is appointed to carry on business in as a representative;

- (b) he or his principal has not provided the Authority with such information or documents as the Authority may require;
- (c) he is an undischarged bankrupt, whether in Singapore or elsewhere;
- (d) execution against him in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) he 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;
- (f) he —
 - (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 had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;

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(g) in the case of the proposed appointment of an appointed, provisional or temporary representative in respect of a type of regulated activity, or of an application to enter an additional type of regulated activity for an appointed representative in the register —

- (i) the Authority is not satisfied as to his educational or other qualification or experience having regard to the nature of the duties he is to perform in relation to that type of regulated activity;
- (ii) he or his principal fails to satisfy the Authority that he is a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in that type of regulated activity;
- (iii) the Authority is not satisfied as to his record of past performance or expertise having regard to the nature of the duties which he is to perform in relation to that type of regulated activity;
- (iv) the Authority has reason to believe that he

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will not carry on business in that type of regulated activity efficiently, honestly or fairly;

(h) in the case of the revocation of the status of an individual as an appointed, provisional or temporary representative —

- (i) he or his principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition of ~~licence~~ licence, under section 99N or by regulations (as the case may be), that he remains a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in the type of regulated activity for which he is appointed;
- (ii) the Authority is not satisfied with —
 - (A) his educational or other qualification or experience (being qualification or experience not known to the Authority at the time his name and particulars are entered in the public register of representatives); or

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Proposed Amendment

(B) his record of past performance or expertise,

having regard to the nature of his duties as an appointed, provisional or temporary representative;
or

(iii) the Authority has reason to believe that he will not carry on business in the type of regulated activity for which he is appointed efficiently, honestly or fairly;

or has not carried

(iv) the Authority has reason to believe that he has not acted in the best interests of the subscribers or customers of his principal;

(i) the Authority has reason to believe that he may not be able to act in the best interests of the subscribers or customers of his principal, having regard to his reputation, character, financial integrity and reliability;

(j) the Authority is not satisfied as to his financial standing;

(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 individual or any person employed by or associated with him for the purpose of his

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Proposed Amendment

business;

- (l) the individual is in arrears of 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 is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives or allow him to continue carrying on business as an appointed, provisional or temporary representative or to carry on business in that additional type of regulated activity, as the case may be;
- (n) the Authority has reason to believe that any information or document that is furnished by him or his principal to the Authority is false or misleading;
- (o) he has contravened any provision of this Act applicable to him, any condition or restriction imposed on him under this Act or any direction issued to him by the Authority under this Act;

(oa) it appears to the Authority that he has failed to satisfy any of its obligations under or arising from this Act (including any written direction issued by the Authority under this Act);

Existing Provision

(p) a prohibition order under section 101A has been made by the Authority, and remains in force, against him;

...

Power of Authority to issue written directions

101. —(1) The Authority may, if it thinks it necessary or expedient in the public interest, issue written directions, either of a general or specific nature, to any holder of a capital markets services licence, exempt person, representative, or class of such persons, to comply with such requirements as the Authority may specify in the written directions.

...

Power of Authority to make prohibition orders

101A. —(1) The Authority may, by notice in writing, make a prohibition order against a relevant person if —

(a) the Authority suspends or revokes the capital markets services licence held by the person;

(b) where the person is exempt from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d), the Authority has reason to believe that circumstances exist under

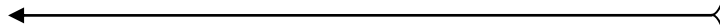
Proposed Amendment

interests of the public or a section of the public or for the protection of investors

Existing Provision

which, if the person were a holder of a capital markets services licence, there would exist a ground on which the Authority may suspend or revoke its licence under section 95;

(c) the Authority suspends or revokes the status of that person as an appointed, provisional or temporary representative;



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(ca) in the case of a person (other than a person referred to in subsection (cc)) who is or was a representative of an exempt person, the Authority has reason to believe that circumstances exist under which, if the person was an appointed, provisional or temporary representative, there would exist a ground on which the Authority may revoke his status as an appointed, provisional or temporary representative (as the case may be) under section 99M;

(cb) in the case of a person (other than a person referred to in subsection (cc)) who is or was a representative of a holder of a capital markets services licence, the Authority has reason to believe that circumstances exist under which, there would exist a ground on which the Authority may revoke his status as an appointed, provisional or temporary representative (as the case may be) under section 99M;

(cc) in the case of a person who is or was a representative of an exempt person or a holder of a capital markets services licence, and exempt from the requirement in section 99B(1) pursuant to section 99B(2), the Authority has reason to believe that circumstances exist under which, if the person was an appointed representative, there would exist a ground on which the Authority may revoke his status as an appointed representative under section 99M;

Existing Provision

- ~~(d) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened any provision of this Act;~~
- (e) the person has been convicted of an offence under this Act or 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;
- (f) the person has an order for the payment of a civil penalty made against him by a court under Part XII or has entered into an agreement with the Authority to pay a civil penalty under that Part;
- (g) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to any regulated activity carried out by that person; or
- (h) the person has been removed at the direction of the Authority from office or employment as an officer of the holder of a capital markets services licence under section 97(1)(h).

Proposed Amendment

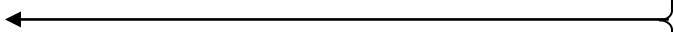
- (d) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened -
- (i) any provision of this Act;
 - (ii) any condition or restriction imposed by the Authority under this Act; or
 - (iii) any written direction issued by the Authority under this Act;

Existing Provision

Proposed Amendment

- (2) In subsection (1), “relevant person” means —
- (a) the holder of a capital markets services licence or a person who was previously such a holder;
 - (b) a person that is exempt from the requirement to hold a capital markets services licence under section 99(1) or a person who was previously so exempt;
 - (c) a representative of a person exempt from the requirement to hold a capital markets services licence under section 99(1)~~(f), (g) or (h)~~ or a person who was previously such a representative;
 - (d) an appointed, provisional or temporary representative or a person who was previously such a representative;
 - (e) an officer of the holder of a capital markets services licence or a person that is exempt from the requirement to hold a capital markets services licence under section 99(1), or a person who was previously such an officer; or

(da) a representative exempt from section 99B(1) or a person who was previously such a representative;



...

Handling of customer assets

Existing Provision

104. —(1) A holder of a capital markets services licence shall, to the extent that it receives money or other assets from or on account of a customer —

~~(a) do so on the basis that the money or other assets shall be applied solely for such purpose as may be agreed to by the customer, when or before it receives the money or other assets;~~

(b) pending such application, pay or deposit the money or other assets in such manner as may be prescribed; and

(c) record and maintain a separate book entry for each customer in accordance with the provisions of this Act in relation to that customer's money or other assets.

(2) The Authority may, without prejudice to section 341, make regulations in respect of all or any of the matters in this Division, including the handling of money or other assets by a holder of a capital markets services licence.

...

Power of Authority to make regulations

123. —(1) The Authority may make regulations in respect of the conduct of business in any regulated activity by the

Proposed Amendment

(a) do so on the basis that the money or other assets shall be applied solely for such purpose as may be agreed to by the customer except in such circumstances as may be prescribed by the Authority, when or before it receives the money or other assets;

Existing Provision

holder of a capital markets services licence or a representative of such a holder.

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

(a) specify requirements applicable to the holder of a capital markets services licence in relation to securities financing;

~~(aa) specify requirements and restrictions relating to the granting of unsecured advance, unsecured loan or unsecured credit facility by the holder of a capital markets services licence;~~

(b) prohibit the making of direct or indirect representations, expressly or by implication, relating to specified matters, or the use of misleading or deceptive advertisements by or on behalf of the holder, and impose conditions or restrictions for the use of advertisements by or on behalf of the holder;

...

Investigation by Authority

152. —(1) The Authority may conduct such investigation as it considers necessary or expedient for any of the following

Proposed Amendment

(aa) specify items which constitute an unsecured advance, unsecured loan or unsecured credit facility, and specify requirements and restrictions relating to, the granting of such unsecured advance, unsecured loan or unsecured credit facility by the holder of a capital markets services licence;

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Proposed Amendment

purposes:

- (a) to exercise any of its powers or to perform any of its functions and duties under this Act;
- (b) to ensure compliance with this Act or any written direction issued under this Act; or
- (c) to investigate an alleged or suspected contravention of any provision of this Act or any written direction issued under this Act.

...

(6) In this section, “requirement imposed by the Authority” includes a requirement imposed by an investigator under Subdivision (2). } or Subdivision (3)

...

Self-incrimination and savings for advocates and solicitors

153. —(1) A person is not excused from disclosing information to the Authority or, as the case may be, an investigator under Subdivision (2), } under a requirement made of him under any provision of this Division on the ground that the disclosure of the information might tend to incriminate him. or Subdivision (3)

(2) Where a person claims, before making a statement

Existing Provision

disclosing information that he is required to under any provision of this Division to the Authority or, as the case may be, an investigator under Subdivision (2), that the statement might tend to incriminate him, that statement —

(a) shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 162(3); but

(b) shall, for the avoidance of doubt, be admissible in evidence in civil proceedings under Part XII.

...

Power of Authority to order production of books

163. For the purpose of an investigation under this Division, the Authority may, in writing, require any person at a specified time and place to provide information or produce books relating to any matter under investigation, and such person shall comply with that requirement.

Proposed Amendment

or Subdivision (3)

Power to enter premises without warrant

163A. – (1) In connection with an investigation under this Division, any officer of the Authority who is authorised by the Authority to do so (referred to in this section as an investigator) and such other officers or persons as the Authority has authorised in writing to accompany the investigator (referred to in this section as authorised person) may enter any premises.

(2) No investigator or authorised person shall enter any premises in the exercise of the powers under this section unless the investigator has given the occupier of the premises a written notice which —

(a) gives at least 2 working days’ notice of the intended entry;

(b) indicates the subject matter and purpose of the investigation; and

(c) indicates the nature of the offences created by section 168.

(3) Subsection (2) shall not apply —

(a) if the investigation relates to a contravention referred

Existing Provision

Proposed Amendment

to in section 152(1)(c) and the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person which is being investigated in relation to the contravention; or

(b) if the investigator has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall be exercised upon production of —

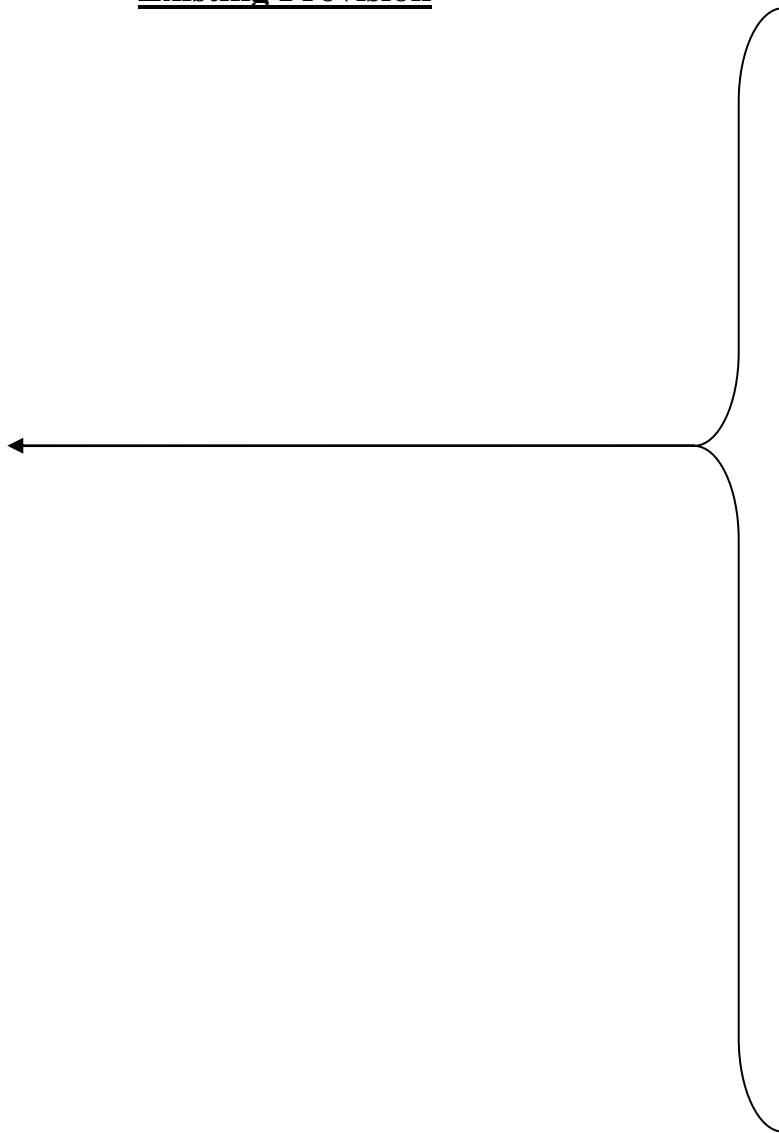
(a) evidence of the investigator’s authorisation and the authorisation of every authorised person accompanying him; and

(b) a document containing the information referred to in subsection (2)(b) and (c).

(5) An investigator or authorised person entering any premises under this section may —

(a) take with him such equipment as appears to him to be necessary;

(b) require any person on the premises to produce any book which he considers relates to any matter relevant to the investigation;



Existing Provision

Proposed Amendment

~~Application for warrant to seize books not produced~~

~~164.—(1) Where the Authority has reasonable grounds to suspect that there is, on any particular premises, any book the production of which has been required under section 163, and—~~

~~(a) which has not been produced in compliance with that requirement; or~~

~~(b) which the Authority has reasonable grounds to believe will not be produced in compliance with that requirement,~~

~~the Authority may apply to a Magistrate for the issue of a warrant to search the premises for such book.~~

~~(2) Whenever it appears to a Magistrate, upon an application made under subsection (1), and after such enquiry as he may think necessary, that there are reasonable grounds for suspecting that there is, on particular premises, any book the production of which has been required under section 163, and—~~

~~(a) which has not been produced in compliance with~~

- (c) require any person to state, to the best of his knowledge and belief, where any such book is to be found; and
- (d) take any step or issue any requirement to any person which appears to be necessary for the purpose of preserving or preventing interference with any book which he considers relates to any matter relevant to the investigation.

Existing Provision

that requirement; or

~~(b) which the Magistrate has reasonable grounds to suspect will not be produced in compliance with that requirement,~~

~~the Magistrate may issue a warrant authorising the Authority or any person named therein, with or without assistance —~~

~~(i) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and~~ ←

~~(ii) to take possession of, or secure against interference, any book that appears to be a book the production of which was so required.~~

~~(3) The powers conferred under subsections (1) and (2) are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.~~

~~(4) In this section, “premises” includes any structure, building, aircraft, vehicle or vessel.~~

Proposed Amendment

Application for warrant to seize books not produced

164. – (1) The Authority may apply to a Magistrate for a warrant and the Magistrate may issue such a warrant if he is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book –

(a) the production of which has been required under section 163 or 163A, and which has not been produced in compliance with that requirement; or

(b) which the Authority has power under section 163 to require to be produced and if the books were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise the Authority or any person named therein, with or without assistance –

(a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and to break open and search anything, whether a fixture or not, in the premises;

(c) to take possession of, or secure against interference, any book that appears to be a book of a kind in respect

Existing Provision

Proposed Amendment

of which the application under subsection (1) was granted;

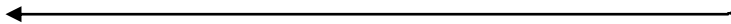
(d) to require any person to provide an explanation of any book that appears to be a book of a kind in respect of which the application under subsection (1) was granted, or to state, to the best of his knowledge and belief, where it may be found;

(e) to search any person on those premises if there are reasonable grounds for believing that that person has in his possession any book, equipment or article which has a bearing on the investigation concerned; and

(f) to remove from those premises for examination any equipment or article which relates to any matter relevant to the investigation concerned.

(3) If, in the case of a warrant issued under subsection (2), the Magistrate is satisfied that it is reasonable to suspect that there are also on the premises other books relating to the investigation concerned, the warrant shall also authorise the actions mentioned in subsections 2(a) to (f) to be taken in relation to any such book.

(4) The Authority or any person named in the warrant may allow any equipment or article which has a bearing on an investigation



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Proposed Amendment

and which may be removed from any premises for examination under subsection (2)(f) to be retained on those premises subject to such conditions as the Authority or person named in the warrant may require.

(5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(6) Where a warrant is issued under subsection (2) and there is no one at the premises when the Authority or any person named in the warrant proposes to execute such a warrant, the Authority or any person named in the warrant shall, before executing it –

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

(b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(7) if the Authority or any person named in the warrant is unable to inform the occupier of the intended entry, the Authority or any person named in the warrant shall, when executing the warrant, leave a copy of it in a prominent place on the premises.

(8) On leaving any premises which the Authority or any person named in the warrant has entered by virtue of a warrant under



Existing Provision

Proposed Amendment

Powers where books are produced or seized

165. —(1) This section shall apply where —

- (a) books are produced to the Authority under a requirement made under section 163;
- (b) under a warrant issued under section 164, the Authority or a person named therein —
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
- (c) under a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.

this section, the Authority or any person named in the warrant shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as the Authority or any person named in the warrant found them.

(9) The powers conferred under subsections (1) to (5) are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(10) In this section,

“premises” includes any structure, building, aircraft, vehicle or vessel.

“occupier”, in relation to any premises, means a person whom the Authority or any person named in the warrant reasonably believes is the occupier of those premises.

(ai) books are produced to the Authority during an entry into premises under section 163A;

Existing Provision

Proposed Amendment

(2) If subsection (1)(a) applies, the Authority may take possession of any of the books.

{ or (ai)

(3) The Authority or, where applicable, a person referred to in subsection (1)(b) may —

(a) inspect, and may make copies of, or take extracts from, any of the books;

(b) use, or permit the use of, any of the books for the purposes of any proceedings; and

(c) retain possession of any of the books for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made about whether or not any proceedings to which the books concerned would be relevant should be instituted; or

(iii) for such proceedings to be instituted and carried on.

{ ; and

(d) require any book which is stored in any electronic form and which the Authority or, where applicable, a person referred to in subsection (1)(b) considers relates to any matter relevant to the investigation concerned, to be produced in a form —

(4) No person shall be entitled, as against the Authority or, where applicable, a person referred to in subsection (1)(b) to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(i) in which it can be taken away; and

(ii) in which it is visible and legible.

Existing Provision

Proposed Amendment

(5) While the books are in the possession of the Authority or, where applicable, the person referred to in subsection (1)(b), the Authority or person —

(a) shall permit another person to inspect at all reasonable times such of the books (if any) as the second-mentioned person would be entitled to inspect if they were not in possession of the Authority or the first-mentioned person; and

(b) may permit any other person to inspect any of the books.

(6) Unless subsection (1)(b)(ii) applies, a person referred to in subsection (1)(b) may deliver any of the books into the possession of the Authority or of a person authorised by the Authority to receive them.

(7) Where subsection (1)(a) or (b) applies, the Authority, a person referred to in subsection (1)(b) or a person into whose possession the books are delivered under subsection (6), may require —

(a) if subsection (1)(a) applies, a person who so produced any of the books; or

{ or (ai)

(b) in any other case, a person who was a party to the compilation of any of the books,

to explain to the best of his knowledge and belief any matter

Existing Provision

Proposed Amendment

about the compilation of any of the books or to which any of the books relate.

...

Offences under this Part

168. —(1) A person who, without reasonable 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.

{ or condition

{ section 163, 163A(5), 164(2)(d), 165(3)(d) or (7), or 166

(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 the territory of Singapore, takes or sends the book out of Singapore, shall be guilty of an offence and shall

{ , equipment or article

{ , equipment or article

{ , equipment or article

Existing Provision

Proposed Amendment

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 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.

exercising the power of entry under section 163A or

(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.

under section 163A or

under section 163A or

issued under section 164

...

False trading and market rigging transactions

~~197. —(1) No person shall create, or do anything that is intended or likely to create a false or misleading appearance —~~

~~(a) of active trading in any securities on a securities market; or~~

~~(b) with respect to the market for, or the price of, such securities.~~

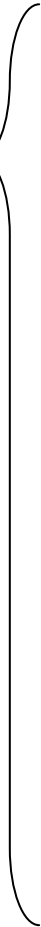
(1) No person shall do an act, cause anything to be done or engage in any course of conduct

(a) if his purpose, or any one of his purposes, for doing so is to create a false or misleading appearance —

Existing Provision

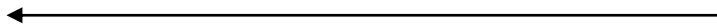
Proposed Amendment

- (i) of active trading in any securities on a securities market; or
 - (ii) with respect to the market for, or the price of, such securities; or
 - (b) that creates, or is likely to create, a false or misleading appearance –
 - (i) of active trading in any securities on a securities market; or
 - (ii) with respect to the market for, or the price of, such securities,
- if he
- (A) knows that;
 - (B) does not care whether; or
 - (C) ought reasonably to have known that,
- by doing so, it will, or will be likely to, result in the false or misleading appearance.



(2) No person shall, by means of any purchase or sale of any securities that do not involve a change in the beneficial

(1A) Notwithstanding section 204, a contravention of subsection (1)(b)(C) shall not be an offence.



Existing Provision

ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without prejudice to the generality of subsection (1), a person who —

- (a) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
- (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with

Proposed Amendment

Existing Provision

him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

~~shall be deemed to have created~~ a false or misleading appearance of active trading in securities on a securities market.

~~(4) In any proceedings against a person for a contravention of subsection (1) because of an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities market.~~

(5) For the purposes of this section, a purchase or sale of securities does not involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the

Proposed Amendment

shall be presumed to have had the purpose of creating

The presumption in subsection (3) may be rebutted

Existing Provision

securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in subsection (3)(a) to a transaction of purchase or sale of securities includes —

- (a) a reference to the making of an offer to purchase or sell securities; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to purchase or sell securities.

...

False trading

~~206. No person shall create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading, or a false or misleading appearance with respect to the market for, or the price of futures contracts on a futures market or foreign exchange in connection with leveraged foreign exchange trading.~~ ←

Proposed Amendment

False Trading

206. – (1) No person shall do an act, cause anything to be done or engage in any course of conduct

- (a) if his purpose or any one of his purposes for doing so is to create, a false or misleading appearance –
 - (i) of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading; or
 - (ii) with respect to the market for, or the price of futures contracts on a futures market or foreign exchange in connection with leveraged foreign exchange trading; or
- (b) that creates, or is likely to create, a false or misleading appearance —
 - (i) of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading; or
 - (ii) with respect to the market for, or the price of futures contracts on a futures market or foreign exchange in connection with leveraged foreign exchange trading;

Existing Provision

Proposed Amendment

Bucketing

207. —(1) No person shall knowingly execute, or hold himself out as having executed, an order for the purchase or sale of a futures contract on a futures market, without having effected a bona fide purchase or sale of the futures contract in accordance with the business rules and practices of the futures market.

(2) No person shall knowingly execute, or hold himself out as having executed, an order to make a purchase or sale of foreign exchange in connection with leveraged foreign exchange trading, without having effected a bona fide purchase or sale in accordance with the order.

...

Civil liability

234. —(1) A person who has acted in contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss (referred to in this section and sections 235 and 236 as the contravening person) shall, whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to any person (referred to in this section and sections 235 and 236 as the claimant) who —

(a) contemporaneously with the contravention, had

if he

- (A) knows that;
- (B) does not care whether, or
- (C) ought reasonably to have known that,

by doing so, it will, or will be likely to, result in the false or misleading appearance.

(2) Notwithstanding section 212, a contravention of subsection (1)(b)(C) shall not be an offence.

Subject to subsection (1A), a

Existing Provision

subscribed for, purchased or sold securities, or entered into futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and

(b) had suffered loss by reason of the difference between —

(i) the price at which the securities, futures contracts, or contracts in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention; and

~~(ii) the price at which the securities, futures contracts or contracts in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention had not occurred.~~

Proposed Amendment

(ii) the price at which the securities, futures contracts or contracts in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if —

(A) in the case of a contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) had been generally available; and

(B) in the case of any other contravention of this Part, the contravention had not occurred.

(1A) Where —

(a) the contravening person has contravened section 199, 200, 201, 209 or 210 by -

(i) making, disseminating or publishing any false, misleading or deceptive statement, information, promise or forecast; or

(ii) concealing or omitting to state material facts; and

(b) the claimant had, in reliance on the statement,

Existing Provision

~~(2) The amount of compensation that the contravening person is liable to pay to the claimant is the amount of the loss suffered by the claimant, up to the maximum recoverable amount.~~

Proposed Amendment

information, forecast, concealment or omission, entered (whether contemporaneously with the contravention or otherwise) into the subscription, purchase sale or contract,

the contravening person shall, whether or not he had gained a profit or avoided a loss as a result of the contravention and whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to the claimant.

(2) Subject to subsection (2A), the amount of compensation that the contravening person is liable to pay to the claimant is –

(a) in the case of a contravention referred to in subsection (1), the amount of the loss suffered by the claimant as stated in paragraph (b) of that subsection, up to the maximum recoverable amount; and

(b) in the case of a contravention referred to in subsection (1A), any loss that reasonably results from the claimant's reliance on the statement, information, forecast, concealment or omission,

after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an

Existing Provision

Proposed Amendment

(3) 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 the contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the ~~contemporaneous~~ dealing or trading in which the loss occurred.

(5) In determining whether a dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place contemporaneously with the contravention under subsection (1), the court shall take into account the following matters:

- (a) the volume of securities, futures contracts, or contracts in connection with leveraged foreign exchange trading of the same description dealt in or traded between the date and time of the

order of court or an agreement to pay by any defendant, defendant corporation or defendant partnership under Division 5 or under an order for disgorgement under section 236L.

(2A) In the case of a contravention referred to in subsection (1A), a claimant who also –

(ii) satisfies the requirement of contemporaneity in subsection (1)(a); and

(iii) has suffered the loss described in subsection (1)(b), may choose to claim compensation under subsection 2(a) or (2)(b), but not both, in respect of the same contravention.

Existing Provision

contravention and the date and time of the dealing in securities, trading in futures contracts, or leveraged foreign exchange trading;

- (b) the date and time the contravention, if it was effected by a transaction or transactions involving the subscription for securities, purchase or sale of securities, trading in futures contracts or leveraged foreign exchange trading, was cleared and settled;
- (c) whether the dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place before or after the contravention;
- (d) in the case of a contravention under section 203, 218 or 219, whether the dealing in securities took place before or after the information to which the contravention relates became generally known;
- (e) such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

(6) In this section and section 236, “maximum recoverable amount”, in respect of each contravention by a contravening person means —

- (a) the amount of the profit that the contravening person

Proposed Amendment

Existing Provision

gained; or

(b) the amount of the loss that he avoided,

as a result of the contravention, after deducting all amounts of compensation that the contravening person had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention .

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but not including such amount of compensation paid or payable by the contravening person under subsection (2)(b)

...

Civil liability in event of conviction, etc.

236. —(1) Notwithstanding section 234, where the contravening person —

- (a) has been convicted of an offence under this Part; or
- (b) has an order for the payment of a civil penalty made against him under section 232, other than by way of a default judgment or a consent order made with or without admission of contravention under section 232(4),

in respect of the contravention of any of the provisions in this Part, ~~which resulted in his gaining a profit or avoiding a loss,~~ the court which convicted him or made the order against him (referred to in this section as the relevant court) may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims for compensation in respect of that

Existing Provision

contravention.

(2) For the purposes of subsection (1), the relevant court shall not fix a date that is earlier than 3 months from the date the conviction or the order imposing the civil penalty, as the case may be, has been made final.

~~(3) The relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay to each claimant who has filed and proven his claim for compensation an amount —~~

~~(a) equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 234 against the contravening person himself; or~~

~~(b) equal to the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,~~

~~whichever is the lesser.~~

(4) For the purposes of this section, a conviction is made final if —

(a) the conviction is upheld on appeal, revision or

Proposed Amendment

(3) The relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay compensation to each claimant who has filed and proven his claim for compensation, provided that for claims quantified under subsection 234(2)(a), the compensation amount shall be —

(a) equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 234 against the contravening person himself; or

(b) equal to the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to amounts of all other claims under section 234(2)(a) which have been proved to the court,

whichever is the lesser.

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otherwise;

- (b) the conviction is not subject to further appeal;
- (c) no notice of appeal against the conviction is lodged within the time prescribed by sections 377 and 378 of the Criminal Procedure Code 2010; or
- (d) any appeal against the conviction is withdrawn.

...

Civil liability of corporation for contravention by employee or officer

236D. —(1) A defendant corporation which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236B(1) or 236C(1) shall, whether or not it had been convicted or had a civil penalty imposed on it, be liable to pay compensation to any person (referred to in this section as the claimant) who —

- (a) contemporaneously with the contravention by the contravening person, had subscribed for, purchased or sold securities, or entered into any futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and
- (b) had suffered loss by reason of the difference

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between —

- (i) the price at which the securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention by the contravening person; and
- ~~(ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention by the contravening person had not occurred.~~

Proposed Amendment

(ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if –

- (A) in the case of a contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) had been generally available; and
- (B) in the case of any other contravention of this Part, the contravention by the contravening person had not occurred.

(2) The amount of compensation that the defendant corporation is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

- (a) by the contravening person under an order of court or an agreement to pay; or
- (b) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up

Existing Provision

Proposed Amendment

to the maximum recoverable amount.

...

Civil liability of partnership or limited liability partnership for contravention by partner, etc.

236G. —(1) A defendant partnership which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236E(1) or 236F(1) shall, whether or not the partners of the partnership or the limited liability partnership had been convicted or the partnership or limited liability partnership had a civil penalty imposed on it, be liable to pay compensation to any person (referred to in this section as the claimant) who —

- (a) contemporaneously with the contravention by the contravening person, had subscribed for, purchased or sold securities, or entered into any futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and
- (b) had suffered loss by reason of the difference between —
 - (i) the price at which the securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading were dealt in or traded

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contemporaneously with the contravention by the contravening person; and

- ~~(ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention by the contravening person had not occurred.~~

(2) The amount of compensation that the defendant partnership is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

- (a) by the contravening person under an order of court or an agreement to pay; or
- (b) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

...

Civil liability of officer of corporation, etc.

236I. —(1) A defendant who has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by a contravening person referred to in section 236H(1) shall,

Proposed Amendment

(ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if —

- (A) in the case of a contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) had been generally available; and
- (B) in the case of any other contravention of this Part, the contravention by the contravening person had not occurred.

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whether or not the defendant had been convicted under section 331 or had a civil penalty imposed on him under section 236H, be liable to pay compensation to any person (referred to in this section as the claimant) who —

(a) contemporaneously with the contravention by the contravening person, had subscribed for, purchased or sold securities, or entered into futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and

(b) had suffered loss by reason of the difference between —

(i) the price at which the securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention by the contravening person; and

~~(ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention by the contravening person had not occurred.~~

Proposed Amendment

(ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if —

(A) in the case of a contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) had been generally available; and

(B) in the case of any other contravention of this Part, the contravention by the contravening person had not occurred.

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Proposed Amendment

(2) The amount of compensation that the defendant is liable to pay to the claimant is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

(a) by the contravening person under an order of court or an agreement to pay; or

(b) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

...

Jurisdiction of District Court

237. A District Court shall have jurisdiction to hear and determine any action under Division 4 or 5 ~~or any application under section 236L~~ regardless of the monetary amount.

or application

Rules of Court

238. —(1) Rules of Court (Cap. 322, R 5) may be made —

(a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under Division 4 and 5 ~~or any application under section 236L~~; and

(b) to provide for costs and fees of such proceedings,

Existing Provision

and for regulating any matter relating to the costs of such proceedings.

(2) Without prejudice to the generality of subsection (1), Rules of Court may, in relation to proceedings under sections 236, 236K and 236L –

- (a) provide for the advertisement of a notice for the filing and proof of claims under those sections;
- (b) prescribe the procedure for the filing, proof and hearing of those claims; and
- (c) provide for the payment of the costs and fees of an action that has been stayed under section 235 (2) or 236J.

...

Preliminary provisions

239. —(1) In this Division —

...

“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, securities to be issued or sold and which contains the information required to be included in a prospectus under section 243, except for such information

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as may be prescribed by the Authority;

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

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

~~“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of securities, and includes any document deemed to be a prospectus under section 257, but does not include —~~

~~(a) a profile statement; or~~

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

...

Requirement for prospectus and profile statement, where relevant

240. —(1) No person shall make an offer of securities unless the offer —

Proposed Amendment

“product highlights sheet” means a product highlights sheet referred to in section 240AA;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of securities, and includes any document deemed to be a prospectus under section 257, but does not include —

(a) a profile statement;

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

(c) a product highlights sheet;

Existing Provision

- (a) is made in or accompanied by a prospectus in respect of the offer —
- (i) that is prepared in accordance with section 243;
 - (ii) a copy of which, being one that has been signed in accordance with subsection (4A), is lodged with the Authority; and
 - (iii) that is registered by the Authority; and
- (b) complies with such requirements as may be prescribed by the Authority.

...

(7) In this section —

- (a) “securities” has the same meaning as in section 2 and also includes the securities of a corporation, whether the corporation is in existence or is to be formed;
- (b) a reference to an offer or invitation in respect of securities for subscription or purchase shall be construed as including an offer or invitation in respect of securities by way of barter or exchange.



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Requirement for product highlights sheet

240AA. — (1) Subject to subsection (2), no person shall make an offer of debentures or units of debentures that is made in or accompanied by a prospectus or profile statement that complies with section 240, unless the prospectus or profile statement, as the case may be, is accompanied by a product highlights sheet in respect of the offer —

- (a) that complies with such requirements as may be prescribed by the Authority; and
- (b) a copy of which is lodged with the Authority.

(2) Subsection (1) shall not apply to debentures or units of debentures other than —

- (a) asset-backed securities; or
- (b) structured notes.

(3) In this section —

“asset-backed securities” has the same meaning as in section 262(3);

“single purpose vehicle” means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

Existing Provision

Proposed Amendment

- (a) act as counterparty to arrangements which involve the use of derivatives to create exposure to assets from which payments to holders of any structured notes are or will be primarily derived;
 - (b) issue any structured notes;
- “specified financial institution” means –
- (a) any bank licensed under the Banking Act (Cap. 19);
or
 - (b) any entity, or any entity of a class, specified by the Authority by notification published in the *Gazette* to be an entity, or an entity of a class, for the purposes of issuing structured notes;
- “structured notes” means any type of debentures or units of debentures —
- (a) which are issued —
 - (i) pursuant to a synthetic securitisation transaction; or
 - (ii) by a specified financial institution; and
 - (b) in respect of which —
 - (i) either or both of the principal sum and any



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interest are payable;

- (ii) one or more of the underlying securities, equity interests, commodities and currencies are to be physically delivered; or
- (iii) either or both of the principal sum and any interest are payable, and one or more of the underlying securities, equity interests, commodities and currencies are to be physically delivered.

in accordance with a formula based on one or more of the following:

- (A) the performance of any type of securities, equity interest, commodity or index, or of a basket of more than one types of securities, equity interests, commodities or indices;
- (B) the credit risk or performance of any entity or a basket of entities;
- (C) the movement of interest rates or currency exchange rates;

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Proposed Amendment

“synthetic securitisation transaction” means an arrangement involving the use of derivatives to create exposure to assets that are not transferred to or are otherwise a part of an asset pool held by a single purpose vehicle;

(4) Except where compelled to do so by the laws or courts of Singapore or any territory outside Singapore, or any listing rules or other requirements of a securities exchange, futures exchange, overseas securities exchange or overseas futures exchange, no person shall publish or disseminate any advertisement, whether in or outside Singapore, on an offer or intended offer of debentures or units or debentures, which resembles or may otherwise be confused with a product highlights sheet.

(5) The Authority may, for public information, publish —

(a) a product highlights sheet lodged with the Authority under this section; and

(b) where applicable, the translation thereof in the English language submitted to the Authority under section 318A(1).

(6) Any person who contravenes subsection (1) or (4) 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

Existing Provision

Proposed Amendment

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.



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.

...

Restrictions on advertisements, etc.

251. —(1) If a prospectus is required for an offer or intended offer of securities, a person shall not —

- (a) advertise the offer or intended offer; or
- (b) publish a statement that —
 - (i) directly or indirectly refers to the offer or intended offer; or
 - (ii) is reasonably likely to induce persons to subscribe for or purchase the securities,

Existing Provision

unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —

(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 —

(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;

(ii) communicates information that materially deals with the affairs of the entity; 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 institutional investors, relevant persons

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Existing Provision

as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made without contravening subsection (1), if —

- (a) the front page of the preliminary document contains —
 - (i) the following statement:

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.”;
 - (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and
 - (iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the preliminary document to purchase or subscribe for any securities 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 the securities to which the preliminary document relates, or the acceptance of such an offer by any person; and

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(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 institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made before a prospectus or profile statement is registered by the Authority.~~



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(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material

—

- (a) on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made; or
- (b) on matters contained in the prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of debentures or units of debentures, for the sole purpose of equipping any of the following persons with knowledge of the debentures or units of debentures in order for these persons to carry on the regulated activity of dealing in securities or provide any financial advisory service as defined under the Financial Advisers Act (Cap. 110), in relation to the debentures or units of debentures:
 - (i) a person licensed under this Act in respect of dealing in securities;

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Proposed Amendment

- (ii) an exempt person;
- (iii) a person who is a representative in respect of dealing in securities under this Act;
- (iv) a representative of an exempt person;
- (v) a person licensed under the Financial Advisers Act (Cap. 110) in respect of advising on corporate finance;
- (vi) an exempt financial adviser;
- (vii) a person who is a representative in respect of advising on corporate finance under the Financial Advisers Act (Cap. 110); or
- (viii) a representative of an exempt financial adviser.

(4A) Subsection (4)(b) shall only apply in respect of offers of debentures or units of debentures that are Specified Investment Products.

(4B) In subsection (4) and (4A) —

- (a) “exempt financial adviser” has the same meaning as in section 2(1) of the Financial Advisers Act (Cap. 110);
- (b) “representative” —

Existing Provision

Proposed Amendment

- (i) for the purposes of sub-paragraph (b) (iii) and (iv), has the same meaning as in section 2(1), or
- (ii) for the purposes of sub-paragraph (b) (vii) and (viii), has the same meaning as in section 2(1) of the Financial Advisers Act (Cap. 110); and
- (c) “Specified Investment Products” has the same meaning as in the Securities and Futures (Prescribed Class of Products) Regulations 2012.

~~(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 240 without contravening subsection (1).~~

(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 240, or a product highlights sheet that complies with section 240AA(1) without contravening subsection (1).

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

- (a) a statement that identifies the securities, the person making the offer, the issuer and, where applicable, the underlying entity;
- (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

Existing Provision

manner set out in the prospectus or profile statement; and

(d) a statement of how to obtain, or 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 a publication does not contravene subsection (1) if—~~

~~(a) it includes a statement that the prospectus or profile statement in respect of the offer of securities is available for collection at the times and places specified in the statement;~~

~~(b) it includes a statement that anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus or profile statement; and~~

~~(c) it does not contain any information that is not included in the prospectus or profile statement.~~

(9) An advertisement or a publication does not contravene

Proposed Amendment

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

(a) it includes a statement that the prospectus or profile statement in respect of the offer of securities is available for collection at the times and places specified in the statement;

(b) it includes a statement that anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus or profile statement;

(c) it does not contain any information that is not included in the prospectus or profile statement; and

(d) it complies with such requirements as may be prescribed by the Authority.

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subsection (1) if it —

- (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange made by any person;
- (b) consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;
- (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, which —
 - (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 disclosure, notice or report referred to in paragraph (a) or (b); and

Existing Provision

- (ii) does not refer (directly or indirectly) to the offer or intended offer;

(d) consists solely of a statement made by the person making the offer, the issuer or the underlying entity that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;

~~(e) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (f)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio, television or any other means of broadcasting or communication, relating to —~~

- ~~(i) — a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;~~
- ~~(ii) — a disclosure, notice or report referred to in paragraph (a);~~
- ~~(iii) — a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (b);~~

Proposed Amendment

(e) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (f) (i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio, television, or any other means of broadcasting or communication, relating to

—

- (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;
- (ii) a disclosure, notice or report referred to in paragraph (a);
- (iii) a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (b);
- (iv) a report referred to in paragraph (c); or
- (v) a product highlights sheet;

Existing Provision

- ~~(iv) a report referred to in paragraph (c);~~
- (f) is a report about the securities which are the subject of the offer or intended offer, published by someone who is not —
- (i) the person making the offer, the issuer or the underlying entity;
 - (ii) a director or an equivalent person of the person making the offer, the issuer or the underlying entity;
 - (iii) a person who has an interest in the success of the issue or sale of the securities; or
 - (iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);
- (g) is a report about the securities which are the subject of the offer or intended 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 also made or will also be made in one or more other countries;
 - (ii) the publication and delivery of such report

Proposed Amendment

Existing Provision

in that other country or any one of those other countries do not infringe any law, code or other requirement of that country;

- (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; and
- (iv) the person issuing the report complies with such requirements as may be prescribed by the Authority; or

(h) is a publication made by the person making the offer, the issuer or the underlying entity solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —

- (i) an earlier news report or a genuine comment referred to in paragraph (e); or
- (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (10),

Proposed Amendment

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provided that the first-mentioned publication does not contain any material information that is not included in the prospectus.

...

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 —

...

(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 entity and creditors.

Proposed Amendment

Requirement for trustees

265A.—(1) Where an offer of debentures is made in or accompanied by a prospectus, the borrowing entity shall appoint a trustee for the holders of debentures (referred to in this section as appointed trustee) and ensure that a trustee is appointed for the entire tenure of the debentures.

(2) For the avoidance of doubt, subsection (1) shall not apply to an offer which is made pursuant to an exemption under Subdivision (4) of this Division.

(3) The borrowing entity shall ensure that the appointed trustee —

(a) is an entity that is —

(i) a holder of a trust business licence under the Trust Companies Act (Cap. 336); or

(ii) exempt from holding a trust business licence under the Trust Companies Act (Cap. 336);

(b) meet such requirements as may be prescribed by the Authority;

(c) in respect of debentures issued as asset-backed securities or structured notes by an entity other than a specified financial institution, be carrying on business in Singapore; and

Existing Provision

Proposed Amendment

(d) in respect of debentures issued by a specified financial institution, be carrying on business in Singapore unless the borrowing entity is reasonably satisfied that the trustee can and will take timely and appropriate action on behalf of the holders of debentures in the event of a default or as required by the trust deed.

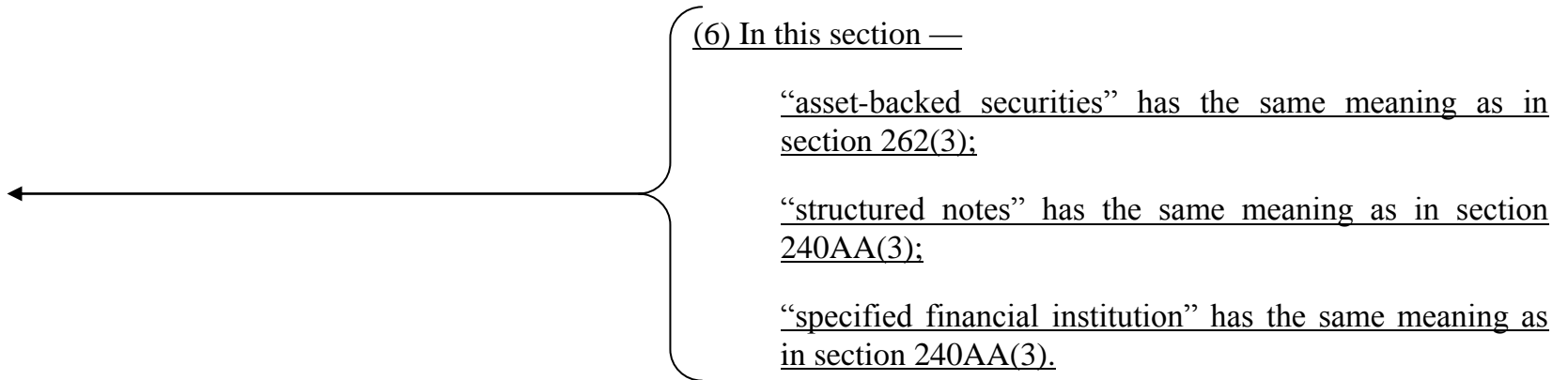
(4) For the purposes of subsection (3)(d), the borrowing entity shall, in determining whether the trustee can and will take timely and appropriate action on behalf of the holders of debentures in the event of a default or as required by the trust deed, consider among other things –

- (i) whether the trustee is licensed or regulated in its home jurisdiction;
- (ii) the contractual arrangements between the borrowing entity and the trustee; and
- (iii) the duties imposed on the trustee by way of the trust deed and the laws applicable to the trustee.

(5) Any person who fails to comply with subsection (1), (3) or (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.

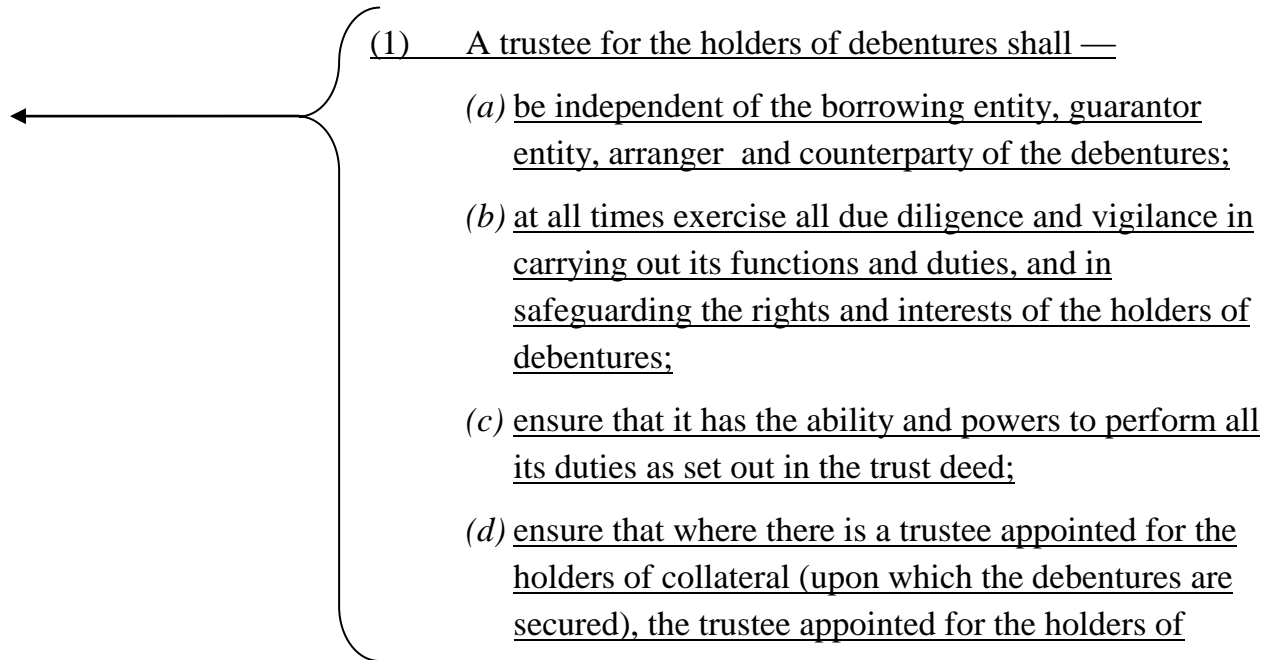
Existing Provision

Proposed Amendment



Duties of trustees

266. —(1) [*Deleted by Act 16/2003*]



Existing Provision

(2) Where, after due inquiry, the trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities 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.

...

Obligations of borrowing entity

~~268. —(1) Where there is a trustee for the holders of any debentures of a borrowing entity, the directors or equivalent persons of the borrowing entity shall—~~

~~(a) at the end of a period not exceeding 3 months ending on a day (being a day after the date of the issue of the relevant prospectus) which the trustee is hereby required to notify the borrowing entity in writing; and~~

~~(b) at the end of each succeeding period thereafter, being a period of 3 months or such shorter time as~~

Proposed Amendment

collateral is subject to duties that are equivalent to, or higher than, those imposed on the trustee for the holders of debentures; and

(e) comply with such other requirements as may be prescribed or imposed by the Authority in respect of a particular offer or transaction.

Existing Provision

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 or equivalent persons 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—~~

~~(a) whether or not the limitations on the amount that the entity may borrow have been exceeded;~~

~~(b) whether or not the borrowing entity and each of its guarantor entities have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;~~

~~(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;~~

~~(d) whether or not any circumstances affecting the~~

Proposed Amendment

Existing Provision

~~borrowing entity, its subsidiaries or its guarantor entities 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;~~

~~(e) whether or not there has been any substantial change in the nature of the business of the borrowing entity or any of its subsidiaries or any of its guarantor entities since the debentures were first issued which has not previously been reported upon as required by this section and, if so, particulars of that change; and~~

~~(f) where the borrowing entity has deposited money with or lent money to or assumed any liability of a corporation which is related to the borrowing entity, particulars of—~~

~~(i) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report; and~~

~~(ii) the total amounts owing to the borrowing entity in respect of money so deposited or lent and the extent of any liability so assumed as at the end of~~

Proposed Amendment

Existing Provision

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 entity and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the 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.~~

(4) Where there is a trustee for the holders of any debentures issued by a borrowing entity, the borrowing entity and each of its guarantor entities 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 —

(a) in writing furnish the trustee, within 21 days after the creation of the charge, with the particulars of any charge created by the entity or the guarantor entity, as the case requires; and

Proposed Amendment

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(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.

(6) The directors or equivalent persons of every borrowing entity and of every guarantor entity shall cause to be made out and lodged ~~with the Authority and~~ with the trustee for the holders of the debentures, if any —

(a) a profit and loss account for the first 6 months of every financial year of the entity 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

(b) a profit and loss account for every financial year of the entity 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

Proposed Amendment

Existing Provision

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 or equivalent persons of a borrowing entity do not lodge with the trustee for the holders of debentures a report as required by subsection (1); or~~

(b) the directors or equivalent persons of a borrowing entity or the directors of a guarantor entity do not lodge with the trustee the balance-sheets and profit and loss accounts as required by subsection (6) within the time prescribed,

the trustee shall immediately lodge notice of that fact with the Authority.

(10) Notwithstanding anything in subsection (8) —

(a) a profit and loss account and balance-sheet of a

Proposed Amendment

(9A) Any person who furnishes information in the profit and loss account and balance-sheet required under section 268(6) shall use due care to ensure that the information is not false or misleading in any material particular.

Existing Provision

borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(a) need not be audited; and

(b) a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(b) need not be audited, or the audit thereof may be of a limited nature or extent, if the trustee for the holders of the debentures of the borrowing entity 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.

(11) Where the trustee has by notice in writing given his consent under subsection (10), the directors or equivalent persons of the borrowing entity, or the directors or equivalent persons of the guarantor entity, 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.

(12) Notwithstanding anything in this section, a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity 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 entity otherwise requires in writing, be based upon the value of the stock in

Proposed Amendment

Existing Provision

trade of the borrowing entity or the guarantor entity, as the case may be, as reasonably estimated by the directors or equivalent persons of the borrowing entity or guarantor entity.

(13) The estimation of the directors or equivalent persons 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 entity laid before the entity at its last preceding annual general meeting and certified in writing by the directors or equivalent persons as such.

Proposed Amendment

Obligations of borrowing entities of debentures that are not listed on securities exchange

268A.—(1) A borrowing entity of debentures which are not listed on a securities exchange (referred to in this section as unlisted debentures) shall prepare and make available to holders of the debentures semi-annual reports covering every six month period commencing from the date of issuance of the debentures, in accordance with this section and such requirements as may be prescribed by the Authority.

(2) Where there is a trustee for the holders of unlisted debentures, the borrowing entity shall ensure that the semi-annual reports required under subsection (1) are lodged with the trustee.

(3) Where the borrowing entity does not lodge with the trustee for the holders of unlisted debentures a report as required by subsection (2), the trustee shall immediately lodge notice of that fact with the Authority.

(4) Subsections (1), (2) and (3) shall only apply in the case where the unlisted debentures have a tenure of 12 months or longer.

(5) A borrowing entity shall immediately disclose to holders of unlisted debentures any information which may materially affect

=

(a) the risks and returns; or



Existing Provision

Proposed Amendment

(b) the price or value,
of the unlisted debentures.

(6) Any person who fails to comply with subsections (1), (2) and (5) 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.

(7) Where the terms of the unlisted debentures allow for redemption at the option of the holder of the unlisted debentures, the borrowing entity shall –

(a) make available bid or redemption prices of the unlisted debentures –

(i) at the frequency at which the borrowing entity has committed to buying back the unlisted debentures or once every fortnight, whichever is more frequent;

(ii) on its website or, in the case where the redemption option is made available through its distributors, the distributors' websites;

(b) where the published bid prices are indicative and may not be the actual bid prices, clearly state this fact on the borrowing entity's website or the distributors'

Existing Provision

Proposed Amendment

websites referred to in subparagraph (a)(ii);

(c) clearly disclose to holders of unlisted debentures the address of the website or websites referred to in subparagraph (a)(ii), and the frequency with which bid or redemption prices referred to in subparagraph (a)(i) are updated; and

(d) ensure that the bid or redemption prices are determined in an independent and fair manner.

(8) A borrowing entity shall –

(a) ensure that the semi-annual and annual profit and loss accounts and balance sheets required under section 268(6) are made available, either in printed form or through electronic means, to holders of unlisted debentures on the day of lodgment of the profit and loss statement or balance-sheet with the trustee; and

(b) immediately notify the holders of unlisted debentures of the release of the financial statements, stating how and where the financial statements can be accessed.

(9) Any person who fails to comply with subsections (7) and (8) 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



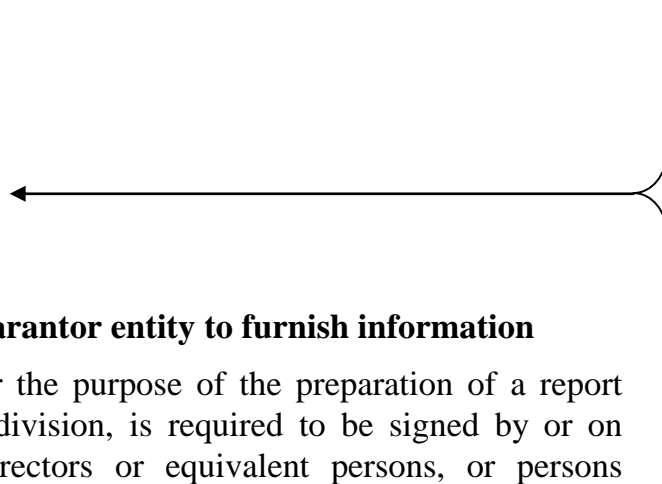
Existing Provision

Proposed Amendment

offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(10) Any person who furnishes information in the semi-annual report required under subsection (1) shall use due care to ensure that the information is not false or misleading in any material particular.

(11) Any person who contravenes subsection (10) 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.



Obligation of guarantor entity 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 equivalent persons, or persons approved by the Authority, of a borrowing entity or any of them, that borrowing entity may, by notice in writing, require any of its guarantor entities to furnish it with any information relating to that guarantor entity which is, by this Subdivision, required to be contained in that report.

...

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.

Existing Provision

...

- (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 indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.



Proposed Amendment

Subdivision (3A) – General

Authority may issue directions

271A.—(1) The Authority may, where it appears to the Authority to be necessary or expedient in the public interest to do so, issue directions by notice in writing either of a general or specific nature to –

- (a) a person making an offer of securities made in or accompanied by a prospectus or profile statement or an offer referred to in section 280, on matters in connection with the offer;
- (b) in the case of a person referred to in paragraph (a) who is a borrowing entity, on matters in connection with requirements and obligations provided under Subdivision (3) of this Division, in addition to the matters referred to in paragraph (a); and
- (c) the trustee appointed pursuant to section 265A(1).

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

(3) It shall not be necessary to publish any direction in the *Gazette*.

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Proposed Amendment



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

(5) No criminal or civil liability shall be incurred by a trustee or any person acting on behalf of a trustee for any thing done or omitted to be done with reasonable care and in good faith in the course of, or in connection with, complying with a direction issued under subsection (1).

Subdivision (4) — Exemptions

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 shares or debentures of an entity if no consideration is or will be given for the issue or transfer of the shares or debentures.

...

Offer made under certain circumstances

273. —(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to the offer of securities if —

- (a) it is made in connection with a take-over offer which is in compliance with the Take-over Code;

...

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

Existing Provision

(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), “unlisted corporation” means a corporation —

(a) that is not a company; and

(b) the securities of which are not listed for quotation on any securities exchange.

(10) In subsection (1)(ca) and (cb), “corporation” means a corporation that is not a company.

...

Offer made using offer information statement

277. —(1) Subject to subsection (1A), Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities (not being such securities as may be prescribed by the Authority) issued by an entity whose shares are listed for quotation on a securities exchange, whether by means of a rights issue or otherwise, if —

(a) in the case where the securities offered are units of shares or debentures, the shares or debentures are those

Proposed Amendment

(8A) An advertisement or publication prepared or issued in connection with an offer or intended offer of securities made under subsections (1)(d) and (1)(e) shall comply with such requirements as may be prescribed by the Authority.

(8B) Any person who contravenes subsection (8A) or who knowingly authorised or permitted the publication or dissemination in contravention of subsection (8A) 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.

Existing Provision

of the entity that issued the units;

(b) an offer information statement relating to the offer which complies with such form and content requirements 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).

...

(6) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (3)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

Offer in respect of international debentures

278. —(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of debentures, or units of debentures, by a body incorporated in a country outside Singapore where the offer —

(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

Proposed Amendment

(7) An advertisement or publication prepared or issued in connection with an offer or intended offer of securities made under this section shall comply with such requirements as may be prescribed by the Authority.

(8) Any person who contravenes subsection (7) or who knowingly authorised or permitted the publication or dissemination in contravention of 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.

Existing Provision

to understand any risk involved in buying or selling those debentures, or units of debentures (whether as principal or agent); and

(b) complies with the conditions specified in subsection (2).

...

Restrictions on advertisements, etc.

282L. —(1) If a prospectus is required for an offer or intended offer of units or derivatives of units in a business trust, a person shall not —

(a) advertise the offer or intended offer; or

(b) publish a statement that —

(i) directly or indirectly refers to the offer or intended offer; or

(ii) is reasonably likely to induce persons to subscribe for or purchase the units or derivatives of units,

unless the advertisement or publication is authorised by this section.

...

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

Proposed Amendment

Existing Provision

- ~~(a) it includes a statement that the prospectus or profile statement in respect of the offer of units or derivatives of units in the business trust is available for collection at the times and places specified in the statement;~~
- ~~(b) it includes a statement that anyone wishing to acquire the units or derivatives of units in the business trust 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.~~ ←

...

Offer made under certain circumstances

282X. —(1) Subdivision (2) of this Division (other than subsection (1)(a) of sections 282C and 282Q) shall not apply to an offer of units or derivatives of units in a business trust if —

- (a) it is made in connection with a take-over offer which is in compliance with the Take-over Code;

...

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

(8) A declaration made under subsection (6) shall be final.

Proposed Amendment

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

- (a) it includes a statement that the prospectus or profile statement in respect of the offer of units or derivatives of units in the business trust is available for collection at the times and places specified in the statement;
- (b) it includes a statement that anyone wishing to acquire the units or derivatives of units in the business trust will need to make an application in the manner set out in the prospectus or profile statement;
- (c) it does not contain any information that is not included in the prospectus or profile statement; and
- (d) it complies with such requirements as may be prescribed by the Authority.

Existing Provision

Proposed Amendment

(9) Any person who contravenes any of the conditions or restrictions specified in the declaration made under subsection (6) 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.

(10) In subsection (1)(b) and (c), “corporation” means a corporation that is not a company.

(11) In subsection (3)(a) and (b), “unlisted corporation” means a corporation —

(a) that is not a company; and

(b) the shares or debentures, or units of shares or debentures of which are not listed for quotation on any securities exchange.

...

Offer made using offer information statement

282ZB. —(1) Subject to subsection (2), Subdivision (2) of this Division (other than subsection (1)(a) of section 282C and section 282Q) shall not apply to an offer of units or derivatives of units in a business trust (not being such securities as may be prescribed by the Authority) issued by a trustee-manager acting in its capacity as trustee-manager of the business trust where units of the business trust which have been previously

(8A) An advertisement or publication prepared or issued in connection with an offer or intended offer of securities made under subsections (1)(d) and (1)(e) shall comply with such requirements as may be prescribed by the Authority.

(8B) Any person who contravenes subsection (8A) or who knowingly authorised or permitted the publication or dissemination in contravention of subsection (8A) 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.

Existing Provision

issued are listed for quotation on a securities exchange, whether by means of a rights issue or otherwise, if —

- (a) in the case where derivatives of units in a business trust are being issued by the trustee-manager in its capacity as trustee-manager of the business trust, the units are those of that business trust;
- (b) an offer information statement relating to the offer which complies with such form and content requirements 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).

...

(7) Where the written consent of an issue manager or underwriter is required to be given under section 282J (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.

Making offer using automated teller machine or electronic means

282ZC. —(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of units or derivatives of units in a business trust using —

Proposed Amendment

- (8) An advertisement or publication prepared or issued in connection with an offer or intended offer of securities made under this section shall comply with such requirements as may be prescribed by the Authority.
- (9) Any person who contravenes subsection (8) or who knowingly authorised or permitted the publication or dissemination in contravention of subsection (8) 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.

Existing Provision

- (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 282C(1)(b)(i) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 282C(4) that the offer be made in or accompanied by a profile statement in respect of the offer.

...

Subdivision (4) — Debentures

Applicability of provisions relating to prospectus requirements

282ZF. Division 1 of this Part shall apply, subject to such modifications and adaptations as may be prescribed, to an offer to subscribe for or purchase debentures or units of debentures (within the meaning of section 239(1)) issued by a trustee of a trust on behalf of the trust and have effect accordingly.

Division 2 — Collective Investment Schemes

Subdivision (1) — Interpretation

Interpretation of this Division

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

Proposed Amendment

Subdivision (4A) – General

Authority may issue directions

282ZG.—(1) The Authority may, where it appears to the Authority to be necessary or expedient in the public interest to do so, issue directions by notice in writing either of a general or specific nature to a person making an offer of units or derivatives of units in a business trust made in or accompanied by a prospectus or profile statement or an offer referred to in section 282ZC, on matters in connection with the offer.

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

(3) It shall not be necessary to publish any direction in the Gazette.

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

Existing Provision

...

“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;

“profile statement” means a profile statement referred to in section 296(2);

~~“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of 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));~~

...

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

Proposed Amendment

“product highlights sheet” means a product highlights sheet referred to in section 296A;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of units in a collective investment scheme or proposed collective investment scheme, but does not include —

(a) a profile statement;

(b) any material, advertisement or publication which is authorised by section 300 (other than subsection (3));
or

(c) a product highlights sheet;

Existing Provision

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.

...

(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),

Proposed Amendment

(1A) The Authority may authorise a collective investment scheme constituted in Singapore subject to such conditions or restrictions as it thinks fit.

(1B) The Authority may, at any time, by notice in writing to the responsible person for a collective investment scheme authorised under subsection (1), vary or revoke any condition or restriction imposed pursuant to subsection (1A) or impose such further condition or restriction as it may think fit.

Existing Provision

(3) and (4) as applicable to that scheme shall continue to be satisfied.

...

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), 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) *(Deleted by Act 1/2005)*

(c) there is a manager for the scheme which satisfies the requirements in subsection (3);

(d) there is a representative for the scheme for the functions set out in subsection (13) who is —

(i) an individual resident in Singapore; or

Proposed Amendment

, and the conditions and restrictions imposed pursuant to subsections (1A) and (1B),

(1A) The Authority may recognise a collective investment scheme constituted outside Singapore subject to such conditions or restrictions as it thinks fit.

(1B) The Authority may, at any time, by notice in writing to the responsible person for a collective investment scheme recognised under subsection (1), vary or revoke any condition or restriction imposed pursuant to subsection (1A) or impose such further condition or restriction as it may think fit.

Existing Provision

Proposed Amendment

(ii) a company, or a foreign company registered under Division 2 of Part XI 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

(f) the scheme, the manager for the scheme and the trustee for the scheme, where applicable, comply with this Act and the Code on Collective Investment Schemes.

...

(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 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.

, and the conditions and restrictions imposed pursuant to subsections (1A) and (1B),

(10) Notwithstanding subsection (9), a failure by any person to

Existing Provision

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.

...

Approval of trustees

289. —(1) The Authority may, upon an application made to it in such form and manner as may be prescribed, approve a public company to act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts (referred to in this Subdivision as an approved trustee).

(2) The Authority shall not approve a public company to act as trustee under subsection (1) unless the company satisfies such financial requirements and other criteria as the Authority may prescribe.

(3) An approved trustee shall continue to satisfy the financial requirements and other criteria prescribed under subsection (2).

(4) Where the Authority is of the opinion that an approved trustee —

(a) has failed to satisfy a financial requirement or other

Proposed Amendment

(1A) The Authority may approve a public company to act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts subject to such conditions or restrictions as it thinks fit.

(1B) The Authority may, at any time, by notice in writing to the approved trustee, vary or revoke any condition or restriction imposed pursuant to subsection (1A) or impose such further condition or restriction as it may think fit.

the conditions and restrictions imposed pursuant to subsections (1A) and (1B), and

(aa) has failed to satisfy a condition or restriction imposed pursuant to subsections (1A) or (1B);

Existing Provision

criterion prescribed under subsection (2);

(b) has not carried out its duties with due care and diligence;

(c) has acted in a manner which prejudices the participants of any authorised collective investment scheme; or

(d) has failed to comply with this Act or the Code on Collective Investment Schemes,

the Authority may —

- (i) revoke an approval granted under this section and may direct the manager for the collective investment scheme or schemes which such approved trustee was acting for, to appoint a new trustee for the scheme or schemes;
- (ii) prohibit such approved trustee from acting as trustee for any new collective investment scheme; or
- (iii) issue such direction as it deems fit.

(5) An approved trustee shall comply with any direction issued to it under subsection (4).

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

(7) Any approved trustee who contravenes subsection (3) or (5) shall be guilty of an offence and shall be liable on

Proposed Amendment

Existing Provision

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.

...

Requirement for prospectus and profile statement, where relevant

296. —(1) No person shall make an offer of units in a collective investment scheme unless the offer —

...

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

Proposed Amendment

Requirement for product highlights sheet

296A.—(1) Subject to subsection (2), no person shall make an offer of units in a collective investment scheme that is made in or accompanied by a prospectus or profile statement that complies with section 296, unless the prospectus or profile statement, as the case may be, is accompanied by a product highlights sheet in respect of the offer —

- (a) that complies with such requirements as may be prescribed by the Authority; and
- (b) a copy of which is lodged with the Authority.

(2) Subsection (1) shall not apply to a collective investment scheme —

- (a) that is a trust;
- (b) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
- (c) all or any units of which are listed for quotation on a securities exchange.



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;

...

Restrictions on advertisements, etc.

300. —(1) If a prospectus is required for an offer, or intended offer of units in a collective investment scheme or proposed collective investment scheme, a person shall not —

- (a) advertise the offer or intended offer; or
- (b) publish a statement that —
- (i) directly or indirectly refers to the offer or intended offer; or
 - (ii) is reasonably likely to induce people to subscribe for or purchase the units,

unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —

(3) Except where compelled to do so by the laws or courts of Singapore or any territory outside Singapore, or any listing rules or other requirements of a securities exchange, futures exchange, overseas securities exchange or overseas futures exchange, no person shall publish or disseminate any advertisement, whether in or outside Singapore, on an offer or intended offer of units in a collective investment scheme or proposed collective investment scheme, which resembles or may otherwise be confused with a product highlights sheet.

(4) The Authority may, for public information, publish —

- (a) a product highlights sheet lodged with the Authority under this section; and
- (b) where applicable, the translation thereof in the English language submitted to the Authority under section 318A(1),

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

Existing Provision

(a) indirectly refers to an offer or intended offer; or

(b) is reasonably likely to induce people 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, relevant persons as defined in section 305 (5) and persons to whom an offer referred to in section 305 (2) is to be made without contravening subsection (1), if —

(a) the front page of the preliminary document contains —

(i) the following statement:

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of

Proposed Amendment

Existing Provision

Singapore.”;

(ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and

(iii) a statement in bold lettering that no offer or 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, before a prospectus or profile statement is registered by the Authority, oral or written material —

(a) on matters contained in a preliminary document which has been lodged with the Authority, to institutional

Proposed Amendment

Existing Provision

investors, relevant persons as defined in section 305 (5) or persons to whom an offer referred to in section 305 (2) is to be made; or

~~(b) on matters contained in the prospectus or profile statement which has been lodged with the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme to market the scheme under the Financial Advisers Act (Cap. 110):~~

- ~~(i) a person licensed under that Act in respect of marketing of collective investment schemes;~~
- ~~(ii) an exempt financial adviser;~~
- ~~(iii) a person who is a representative in respect of marketing of collective investment schemes under that Act;~~
- ~~(iv) a representative of an exempt financial adviser.~~

Proposed Amendment

(b) on matters contained in the prospectus, profile statement or product highlights sheet which has been lodged with the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme in order for these persons to carry on the regulated activity of dealing in securities or provide any financial advisory service as defined under the Financial Advisers Act (Cap. 110), in relation to the units of the scheme

- (i) a person licensed under this Act in respect of dealing in securities;
- (ii) an exempt person;
- (iii) a person who is a representative in respect of dealing in securities under this Act;
- (iv) a representative of an exempt person;
- (v) a person licensed under the Financial Advisers Act (Cap.110) in respect of marketing of collective investment schemes;
- (vi) an exempt financial adviser;
- (vii) a person who is a representative in respect of marketing of collective investment schemes under

Existing Provision

Proposed Amendment

the Financial Advisers Act (Cap.110); and

(viii) a representative of an exempt financial adviser.

~~(2C) In subsection (2B), “exempt financial adviser” and “representative” have the same meanings as in section 2(1) of the Financial Advisers Act (Cap. 110).~~

(2C) In subsection (2B) —

(a) “exempt financial adviser” has the same meaning as in section 2(1) of the Financial Advisers Act (Cap. 110);

(b) “representative” —

(i) for the purposes of sub-paragraph (b) (iii) and (iv), has the same meaning as in section 2(1); and

(ii) for the purposes of sub-paragraphs (b) (vii) and (viii), has the same meaning as in section 2(1) of the Financial Advisers Act (Cap. 110).

~~(3) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 296 without contravening subsection (1).~~

(3) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 296, or a product highlights sheet that complies with section 296A(1) without contravening subsection (1).

(3A) Before a prospectus or profile statement is registered, an advertisement or a publication does not contravene subsection (1) if it contains only the following:

(a) a statement that identifies the person making the offer, the responsible person for the collective investment scheme and, where the collective investment scheme is not a corporation, the collective investment scheme;

(b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;

(c) a statement that anyone wishing to acquire the units in the collective investment scheme will need to make an application in the manner set out in the prospectus or profile statement;

(d) a statement on how to obtain, or arrange to receive, a copy of the prospectus or profile statement; and

Existing Provision

(e) the investment focus of the collective investment scheme.

(3B) To satisfy subsection (3A), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the information referred to in paragraphs (d) and (e).

(3C) After a prospectus or profile statement is registered with the Authority, an advertisement or a 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 disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, made by any person, provided that the disclosure, notice or report complies with such requirements as may be prescribed by the Authority;

(aa) consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, provided that the notice or report complies with such requirements as may be prescribed by the Authority, or a presentation of

Proposed Amendment

Existing Provision

oral or written material on matters so contained in the notice or report at the meeting or general meeting;

(b) consists solely of a report about the collective investment scheme or proposed collective investment scheme that is issued pursuant to this Act and the Code on Collective Investment Schemes;

(ba) consists solely of a statement made by the person making the offer or the responsible person that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;

~~(c) is a news report, or a genuine comment, by a person other than a person referred to in paragraph (d)(i), (ii), (iii) or (iv), 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 profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;~~

~~(ii) — a disclosure, notice or report referred to in paragraph (a);~~

~~(iii) — a notice, report, presentation, meeting, proposed meeting, general meeting or proposed general meeting referred to in paragraph (aa); or~~

Proposed Amendment

(c) is a news report, or a genuine comment, by a person other than a person referred to in paragraph (d) (i), (ii), (iii) or (iv), 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 profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;
- (ii) a disclosure, notice or report referred to in paragraph (a);
- (iii) a notice, report, presentation, meeting, proposed meeting, general meeting or proposed general meeting referred to in paragraph (aa);
- (iv) a report referred to in paragraph (b); or
- (v) a product highlights sheet;

Existing Provision

- ~~(iv)~~—a report referred to in paragraph ~~(b)~~;
- (d) is a report about the units in the collective investment scheme which are the subject of the offer or intended offer, published by someone who is not —
- (i) the person making the offer, the responsible person for the scheme, its agent or distributor;
 - (ii) a director or an equivalent person of the person making the offer or the responsible person for the scheme;
 - (iii) a person who has an interest in the success of the issue or sale of the units; or
 - (iv) a person acting at the instigation of, or by arrangement with, any person referred to in subparagraph (i), (ii) or (iii);
- (e) is a report about the units in the collective investment scheme which are the subject of the offer or intended 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 also made or will also be made in one or more other countries;
 - (ii) the publication and delivery of such report in that

Proposed Amendment

Existing Provision

- other country or any one of those other countries do not infringe any law, code or other requirement of that country;
- (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; and
 - (iv) the person issuing the report complies with such requirements as may be prescribed by the Authority; or
- (f) 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 —
- (i) an earlier news report or a genuine comment referred to in paragraph (c); or
 - (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (5),

Proposed Amendment

Existing Provision

provided that the first-mentioned publication does not contain any material information that is not included in the prospectus.

...

Offer or invitation made under certain circumstances

303. —(1) Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme if it is made in relation to units in a collective investment scheme (not being such excluded units in a scheme as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange.

(2) Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme if it is an offer to enter into an underwriting agreement relating to units in a collective investment scheme.

Offer made to institutional investors

304. Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme, whether or not they have been previously issued, made to an institutional investor.

...

Offer made using offer information statement

Proposed Amendment

(3) An advertisement or publication prepared or issued in connection with an offer or intended offer of units in a collective investment scheme made under subsection (1) shall comply with such requirements as may be prescribed by the Authority.

(4) Any person who contravenes subsection (3) or who knowingly authorised or permitted the publication or dissemination in contravention of subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 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.

Existing Provision

305B. —(1) Subject to subsection (2), Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme whose units are listed for quotation on a securities exchange, whether by means of a rights issue or otherwise, if —

- (a) an offer information statement relating to the offer which complies with such form and content requirements as may be prescribed by the Authority is lodged with the Authority; and
- (b) the offer is made in or accompanied by the offer information statement referred to in paragraph (a).

...

(7) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

Making offer using automated teller machine or electronic means

305C. —(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

Proposed Amendment

(8) An advertisement or publication prepared or issued in connection with an offer or intended offer of units in a collective investment scheme made under this section shall comply with such requirements as may be prescribed by the Authority.

(9) Any person who contravenes subsection (8) or who knowingly authorised or permitted the publication or dissemination in contravention of subsection (8) 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.

Existing Provision

(b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 296(1)(a) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 296(2) that the offer be made in or accompanied by a profile statement in respect of the offer.

...

Division 3 — Securities Hawking

Securities hawking prohibited

309. —(1) No person shall make an offer to any person of securities for subscription or purchase, or an invitation to any person to subscribe for or purchase securities, in the course of, or arising from, an unsolicited meeting with that other person.

...

(7) In this section —

(a) “securities” has the same meaning as in section 2 and also includes the securities of a corporation, whether the corporation is in existence or is to be formed;

(b) a reference to an offer or invitation in respect of securities for subscription or purchase shall be construed as including an offer or invitation in respect of securities by way of barter or exchange.



Proposed Amendment

Part XIII A

OFFERS OF CAPITAL MARKETS PRODUCTS

Interpretation of this Part

309A. — (1) In this Part, unless the context otherwise requires —

“issuer”, in relation to an offer of capital markets products, means the entity that issued or will be issuing the capital markets product being offered;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of a capital market product.

(2) For the purposes of this Part, a person makes an offer of capital markets products if, and only if, as principal —

(a) he makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those capital markets products 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) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those capital markets products by him or another person with whom he has made arrangements for that issue or sale.

(3) In subsection (2), “sale” includes any disposal for valuable

Existing Provision

Proposed Amendment

consideration.

Obligation to classify products and notify relevant persons

309B. – (1) No issuer shall make an offer of a capital markets product unless he has –

- (a) determined whether the product belongs to such class of specified products as the Authority may prescribe;
- (b) where the product is listed for quotation or quoted on a market operated by an approved exchange, notified the approved exchange in writing as to whether the product belongs to such class of specified products as the Authority may prescribe; and
- (c) where an offer of the product is made through a holder of a capital markets services licence or through a financial adviser as defined in section 2(1) of the Financial Advisers Act (Cap. 110), notified the holder of a capital markets services licence or financial adviser in writing as to whether the product belongs to such class of specified products as the Authority may prescribe.

(2) Where there is a change in the classification of a capital markets product after the determination made in subsection (1)

(a), the issuer concerned shall –

- (a) where the product is listed for quotation or quoted on an approved exchange, notify the approved exchange in writing of the new classification of the product; and



Existing Provision

Proposed Amendment



PART XIV
APPEALS

Appeals to Minister

310. —(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the decision of the Minister shall be final.

(b) where an offer of the product is made through a holder of a capital markets services licence or through a financial adviser as defined in section 2 (1) of the Financial Advisers Act (Cap. 110), notify the holder of a capital markets services licence or financial adviser in writing of the new classification of the product,

within such period of time as prescribed by the Authority.

(3) Any person who contravenes subsection (1) or (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.

Use of terms “capital protected” or “principal protected”

309C. — (1) No person shall, when describing or referring to any capital markets product which is, will be or has been the subject of an offer or intended offer, use the terms “capital protected” or “principal protected” or any of their derivatives in any language in the name or within the prospectus related to the capital markets product.

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


Existing Provision

Proposed Amendment

...

Power of court to prohibit payment or transfer of moneys, securities, etc.

324. —(1) Where —

- (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute an ~~an offence~~  a contravention under this Act;
- (b) a criminal proceeding has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph, as the case may be (referred to in this section as the relevant person), is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of penalties, damages or compensation or otherwise, or to account for any securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property,

the court may, on application by the Authority, make any one or more of the following orders:

Existing Provision

Proposed Amendment

- (i) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to that relevant person, or to another person at the direction or request of, the relevant person;
- (ii) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying, transferring or otherwise parting with possession of all or any of the moneys, securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property, to such relevant person, or to another person at the direction or request of, the relevant person;
- (iii) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of

Existing Provision

Singapore of moneys of the relevant person or of any person associated with the relevant person;

- (iv) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities or documents of title to securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of securities from a register in Singapore to a register outside Singapore);
- (v) an order appointing —
 - (A) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of that person; or
 - (B) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of that

Proposed Amendment

Existing Provision

person;

- (vi) where the relevant person is a natural person, an order requiring that person to deliver up to the court his passport and such other documents as the court thinks fit;
- (vii) where the relevant person is a natural person, an order prohibiting that person from leaving Singapore without the consent of the court.

...

Proceedings with consent of Public Prosecutor and power to compound offences

336. —(1) Proceedings for an offence against any provisions of Part XII may be taken only with the consent of the Public Prosecutor.

(2) The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence.

Exemption

337. —(1) The Authority may, by regulations, exempt any

Proposed Amendment

(3) The Authority may, in its discretion, compound any offence under a provision of this Act (including an offence under a provision that has been repealed) –

(a) which was compoundable under this section at the time the offence was committed; but

(b) which has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence at the time it was committed.

Existing Provision

Proposed Amendment

person, capital markets product, matter or transaction, or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

...

FOURTH SCHEDULE

Section 320 (1A)

SPECIFIED PROVISIONS

...

8. Section 99(1)(h)

9. Section 120(4)

...

8A. Section 99B(2)

8B. Section 99I(1)