ANNEX 3

DRAFT AMENDMENTS TO PART IIIA (APPROVED HOLDING COMPANIES) OF THE SFA

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

SECURITIES AND FUTURES ACT

(CHAPTER 289)

PART I

PRELIMINARY

[…..]

PART II

MARKETS

[…..]

PART IIA

CLEARING FACILITIES

[…..]

PART III

TRADE REPOSITORIES

[…..]

PART IIIA

APPROVED HOLDING COMPANIES

Objectives of this Part
81T. The objectives of this Part are —

(a) to provide a regulatory framework for the establishment and operation of holding companies of —

(i) approved exchanges;

(ii) ~~designated~~ approved clearing houses;

(iii) licensed trade repositories; and

(~~iii~~iv) corporations that are approved holding companies,

and to ensure that such holding companies are fit and proper to perform their functions; and

(b) to reduce systemic risk.

Division 1 — Establishment of Approved Holding Companies

Designation of corporation as a designated holding company

81TA. – (1) The Authority may designate the holding company of –

(a) any licensed trade repository; or

(b) any corporation which has submitted an application pursuant to section [4(1)(a) of Part TR[1]],

as a designated holding company for the purposes of this Part, if –

(i) it is satisfied that the holding company is primarily responsible for directing or managing the business or operations of the licensed trade repository; or

(ii) it thinks it necessary or expedient –

a. for ensuring fair, orderly and transparent markets;

b. for ensuring safe and efficient clearing facilities;

c. for ensuring the integrity and stability of the capital markets or financial system;

d. in the interests of the public or a section of the public or for the protection of investors; or

e. for the effective administration of this Act.

(2) The Authority shall give notice in the *Gazette* of any person designated under subsection (1).

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

(3) A designation by the Authority under subsection (1) shall continue to have effect until it is withdrawn by the Authority.

(4) The Authority shall not designate any corporation under subsection (1) as a designated holding company without giving that person an opportunity to be heard.

(5) Any corporation that is aggrieved by a decision of the Authority to designate that corporation as a designated holding company under subsection (1) may, within 30 days after the person is notified of the decision, appeal to the Minister whose decision shall be final.

(6) Notwithstanding the lodging of an appeal under subsection (5), the designation by the Authority under this section shall continue to have effect pending the decision of the Minister.

(7) The Minister may, when deciding an appeal under subsection (5), direct that the Authority shall not designate that corporation as a designated holding company, and such order shall have effect from the date of the decision of the Minister.

(8) The Authority may withdraw the designation of any holding company under subsection (1) at any time, on its own initiative or on the application of the designated holding company, if the Authority sees fit.

(9) The Authority shall give notice in the *Gazette* of any withdrawal under subsection (8).

(10) The Authority shall not withdraw the designation of any holding company of a —

(a) any licensed trade repository; or

(b) any corporation which has submitted an application pursuant to section 4(1) - of Part TR][2],

as a designated holding company without giving the person an opportunity to be heard.

Requirement for approval

81U. —(1) No corporation shall be the holding company of any approved exchange, approved ~~designated~~ clearing house, or corporation which is an approved holding company, unless the first-mentioned corporation is an approved holding company.

[2] This refers to the new Part III on Trade Repositories.

(1A) No corporation designated as a designated holding company under section 81TA(1) shall be the holding company of any licensed trade repository unless the first mentioned company —

(a) is an approved holding company; or

(b) has made an application pursuant to section 81V(1) within 60 days from the designation or such other period as may be specified by the Authority, unless that application has been rejected by the Authority.

(2) Any corporation which contravenes subsection (1) or (1A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding $25,000 for every day or part thereof during which the offence continues after conviction.

(3) The Authority may exempt a holding company of an approved exchange, ~~or~~ an ~~designated~~ approved clearing house, a licensed trade repository or a corporation which is an approved holding company from subsection (1) or (1A), as the case may be, subject to such conditions or restrictions as it may impose by notice in writing, if it is satisfied that the exemption would not detract from the objectives specified in section 81T, and the corporation shall comply with such conditions or restrictions.

(4) The Authority may, at any time, by notice in writing to a corporation exempted under subsection (3), vary any condition or restriction referred to in subsection (3) or impose such further conditions or restrictions relating to the exemption as it thinks fit and the corporation exempted under subsection (3) shall comply with such conditions or restrictions.

(5) The Authority may by regulations impose such conditions or restrictions on a corporation exempted under subsection (3) as the Authority thinks fit, and the corporation shall comply with such conditions or restrictions.

(6)(~~4~~6) ~~— The exemption shall be subject to such conditions or restrictions as may be imposed by the Authority.~~ Any person who contravenes any of the conditions or restrictions imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part thereof during which the offence continues after conviction.

Application for approval

81V. —(1) A corporation may apply to the Authority to be approved as an approved holding company.

(2) An application made under subsection (1) shall be —

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

(b) accompanied by a non-refundable prescribed application fee, which shall be paid in the manner specified by the Authority.

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

Power of Authority to approve holding companies

81W. —(1) Where an application is made under section 81V (1), the Authority may approve the corporation as an approved holding company subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing, if the Authority is satisfied that —

(a) it would not be contrary to the interests of the public or contrary to the objectives specified in section 81T to approve the corporation; and

(b) the grounds referred to in subsection (5) for refusing such approval do not apply.

(2) The Authority may, at any time, by notice in writing to the corporation, vary any condition or restriction or impose such further conditions or restrictions as the Authority may think fit.

(3) An approved holding company shall, for the duration of the approval, satisfy all conditions and restrictions that may be imposed on it under subsections (1) and (2).

(4) Subject to subsection (5), the Authority shall not refuse to approve a corporation under subsection (1) without giving the corporation an opportunity to be heard.

(5) The Authority may refuse to approve a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

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

(b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

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

(6) The Authority shall give notice in the *Gazette* of any corporation approved under subsection (1).

(7) Any applicant that is aggrieved by the refusal of the Authority to grant an approval under subsection (1) may, within 30 days after the applicant is notified of the decision, appeal to the Minister whose decision shall be final.

(8) Any corporation which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part thereof during which the offence continues after conviction.

Annual fees payable by approved holding company

81X. —(1) Every approved holding company shall pay to the Authority such annual fees as may be prescribed and in such manner as may be specified by the Authority.

(2) The Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid or payable to it.

Cancellation of approval

81Y. —(1) An approved holding company which intends to cease its activities as an approved holding company may apply to the Authority to cancel its approval.

(2) The Authority may cancel the approval if it is satisfied that the approved holding company referred to in subsection (1) has ceased its activities as an approved holding company.

Power of Authority to revoke approval

81Z. —(1) The Authority may revoke any approval of a corporation as an approved holding company under section 81W (1) if —

(a) the corporation ceases to be the holding company of any approved exchange, approved ~~designated~~ clearing house, licensed trade repository or corporation which is an approved holding company;

(b) the corporation is being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(c) the corporation contravenes —

(i) any condition or restriction applicable in respect of its approval;

(ii) any direction issued to it by the Authority under this Act; or

(iii) any provision in this Act;

(d) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public;

(e) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

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

(g) any information or document provided by the corporation to the Authority is false or misleading.

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any approval under section 81W (1) that was granted to a corporation without giving the corporation an opportunity to be heard.

(3) The Authority may revoke an approval under section 81W (1) that was granted to a corporation on any of the following circumstances without giving the corporation an opportunity to be heard:

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

(b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

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

(4) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision shall be final.

(5) Notwithstanding the lodging of an appeal under subsection (4), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

(6) The Minister may, when deciding an appeal under subsection (4), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

(7) The Authority shall give notice in the *Gazette* of any revocation of approval referred to in subsection (1).

Division 2 — Regulation of Approved Holding Companies

Obligation to notify Authority of certain matters

81ZA. —(1) An approved holding company 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 approved holding company in its application under section 81V (1);

(b) the carrying on of any activity by the approved holding company other than —

(i) the activities of a holding company of any approved exchange, approved~~designated~~ clearing house, licensed trade repository or corporation that is an approved holding company;

(ii) an activity incidental to being a holding company of any approved exchange, approved~~designated~~ clearing house, licensed trade repository or corporation that is an approved holding company; or

(iii) such activity or class of activities as the Authority may prescribe;

(c) the acquisition by the approved holding company of a substantial shareholding in a corporation which does not carry on —

(i) any activity of a holding company of any approved exchange, approved~~designated~~ clearing house, licensed trade repository or corporation that is an approved holding company;

(ii) any activity incidental to being a holding company of any approved exchange, approved~~designated~~ clearing house, licensed trade repository or corporation that is an approved holding company; or

(iii) such activity or class of activities as the Authority may prescribe;

(d) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the approved holding company.

(2) Without prejudice to the generality of section 81ZL (1), the Authority may, at any time after receiving a notification referred to in subsection (1), issue directions to the approved holding company —

(a) where the notification relates to a matter referred to in subsection (1) (*b*) —

(i) to cease carrying on the first-mentioned activity referred to in subsection (1) (*b*); or

(ii) to carry on the first-mentioned activity referred to in subsection (1) (*b*) subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL (1); or

(b) where the notification relates to a matter referred to in subsection (1) (*c*) —

(i) to dispose of the shareholding referred to in subsection (1) (*c*); or

(ii) to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL (1),

and the approved holding company shall comply with such directions.

(3) Any approved holding company which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding $20,000 for every day or part thereof during which the offence continues after conviction.

Obligation to submit periodic reports

81ZB. —(1) An approved holding company shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $200,000 and, in the

case of a continuing offence, to a further fine not exceeding $20,000 for every day or part thereof during which the offence continues after conviction.

[…..]