

**ANNEX 1: DRAFT SECURITIES AND FUTURES
(AMENDMENT) BILL 2007
COMPARATIVE TABLE**

COMPARATIVE TABLE OF PROVISIONS

AMENDMENTS TO THE SECURITIES AND FUTURES ACT

<u>Existing Provision</u>	<u>Proposed Amendment</u>
Preliminary Provisions	
2. —(1) In this Act, unless the context otherwise requires — ...	
"advocate and solicitor" means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);"	<u>"appointed representative" means a representative who qualifies as a representative under section 99C and, unless it is otherwise stated, shall include a provisional representative;</u>
<p>←</p> <p>"auditor" means a public accountant who is registered or deemed to be registered under the Accountants Act (Cap. 2) and, in Divisions 1 and 1A of Part XIII, when used in relation to an entity not being a company, includes —</p> <p>(a) a person who is duly registered, licensed, approved or otherwise authorised to practise as an auditor (such practice to include the issue of any opinion, report or other document on the audit of any financial statement) —</p> <p>(i) under the laws of the place where the entity is formed or constituted; or</p>	

Existing Provision

(ii) under the laws of the place of his practice, if the auditing standards that are or will be applied to the financial statements of the entity are —

(A) auditing standards commonly applied in that place; or

(B) international auditing standards (by whatever name called); or

(b) such other person as may be approved by the Authority in any particular case to be an auditor for such entity;

...

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

~~(a) in the direct employment of, or acting for or by arrangement with, the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding company or holder of a capital markets services licence, as the case may be; and~~

Proposed Amendment

"chief executive officer" in relation to —

(a) an approved exchange, a recognised market operator, a designated clearing house, a person operating a clearing facility, an approved holding company or a holder of a capital markets services licence, means any person, by whatever name described, who is —

(i) in the direct employment of, or acting for or by arrangement with, the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding company or holder of a capital markets services licence, as the case may be; and

(ii) principally responsible for the management and conduct of the business of the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding company or holder of a capital markets services licence, as the case may be, in Singapore; and

(b) a corporation (other than one referred to in paragraph (a)), means any person, by whatever name called, who is in the direct employment of, or acting for or by

Existing Provision

~~(b) principally responsible for the management and conduct of the business of the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding company or holder of a capital markets services licence, as the case may be, in Singapore;~~

...

“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 ~~only~~ 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;

...

Proposed Amendment

arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;

primarily

Existing Provision

"customer" means —

(a) in relation to a holder of a capital markets services licence —

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

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

(A) for the sale or purchase of securities;

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

(C) in connection with leveraged foreign exchange trading,

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

Proposed Amendment

Existing Provision

Proposed Amendment

(b) for the purposes of ~~Part III~~, a person on whose behalf a member

Parts II, III and IIIA

of ~~a designated clearing house~~ carries on any activity regulated under this Act, but does not include —

an approved exchange or designated clearing house, as the case may be,

(i) the member, with respect to dealings for the member's own account;

(ii) any officer, director, employee or representative of the member; or

(iii) a related corporation of the member, with respect to accepted instructions to deal for an account belonging to, and maintained wholly for the benefit of, that related corporation;

...

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

...

Existing Provision

"futures contract" means —

(a) for the purposes of Part I of the First Schedule —

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

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

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

(ii) such other contract or class of contracts as the Authority may prescribe as a futures contract,

(b) for the purposes of any other provision in this Act —

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

(A) one party agrees to deliver a specified commodity, or a specified quantity

Proposed Amendment

but does not include such contract or class of contracts that would otherwise fall within paragraph (a)(i) as the Authority may prescribe as not being a futures contract;

Existing Provision

of a specified commodity, to another party at a specified future time and at a specified price payable at that time pursuant to the terms and conditions set out in the business rules of a futures market or pursuant to the business practices of a futures market; or

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

- (ii) such other contract or class of contracts as the Authority may prescribe ,

...

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

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

Proposed Amendment

as a futures contract

but does not include such contract or class of contracts that would otherwise fall within paragraph (b)(i) as the Authority may prescribe as not being a futures contract;

Existing Provision

...

"member" , in relation to an approved exchange, a recognised market operator or a designated clearing house, means a person who holds membership of any class or description in the approved exchange, recognised market operator or designated clearing house, whether or not he holds any share in the share capital of the approved exchange, recognised market operator or designated clearing house, as the case may be;

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

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

"quote" , in relation to securities and a securities market of an

Proposed Amendment

"misapplication", for the purposes of Part XI, includes misappropriation of any property

"principal", in relation to an individual who is or intends to be an appointed representative or temporary representative, means a holder of a capital markets services licence or a person exempt under section 99(1)(a), (b), (c) or (d), whom that individual is or intends to be in the direct employment of, acting for or by arrangement with, and for whom he carries out any regulated activity;"

"provisional representative" means a representative who qualifies as a provisional representative under section 99(C)(12);

"public register of representatives" means the record of representatives that the Authority publishes under section 99J;

Existing Provision

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

← "recognised market operator" means a corporation that is recognised by the Authority under section 8 (2) as a recognised market operator;

...

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

...

"securities" means —

- (a) debentures or stocks issued or proposed to be issued by a government;
- (b) debentures, stocks or shares issued or proposed to

Proposed Amendment

["recognised business trust" means a business trust that is recognised by the Authority under section 282TA(1);

Existing Provision

be issued by a corporation or body unincorporate;

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

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

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

(ii) the value or price of any group of any such debentures, stocks or shares; or

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

(e) any unit in a collective investment scheme;

(f) any unit in a business trust; ~~or~~

(g) any derivative of a unit in a business trust;

but does not include —

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

Proposed Amendment

; or

(h) such other product or class of products as the Authority may prescribe as a security.

<u>Existing Provision</u>	<u>Proposed Amendment</u>
<p>(ii) bills of exchange;</p> <p>(iii) promissory notes; or</p> <p>(iv) certificates of deposit issued by a bank or financial company whether situated in Singapore or elsewhere;</p> <p>...</p>	<p><u>or</u></p> <p>(v) <u>such other product or class of products that would otherwise fall within paragraphs (a) to (g) as the Authority may prescribe as not being a security;</u></p>
<p>"substantial shareholder" has the same meaning as in Division 4 of Part IV of the Companies Act;</p>	<p><u>"substantial shareholder", in relation to a corporation, means a person who has —</u></p>
<p>"substantial shareholding" has the same meaning as in Division 4 of Part IV of the Companies Act;</p>	<p>(a) <u>an interest or interests in one or more voting shares (excluding treasury shares) in the corporation and the total votes attached to that share, or those shares, is not less than 5% of the total voting rights of all the voting shares (excluding treasury shares) in the corporation; or</u></p> <p>(b) <u>where the share capital of the corporation is divided into 2 or more classes of shares, an interest or interests in one or more voting shares (excluding treasury shares) included in one of those classes of shares in the corporation and the total votes attached to that share, or those shares, is not less than 5% of the total voting rights of all the voting shares (excluding treasury shares) included in that class;</u></p>
	<p><u>"substantial shareholding" means the shareholding of a substantial shareholder of a corporation;</u></p>

Existing Provision

~~"substantial unitholder", in relation to a collective investment scheme, means a participant who has an interest or interests in units in the scheme representing not less than 5% of the total voting rights of all the participants of the scheme;~~

←

...

"take-over offer" means —

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

(i) in the case of a public company, or of a corporation all or any of the shares of which are listed for quotation on a securities exchange —

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

Proposed Amendment

"substantial unitholder", in relation to —

- (a) a collective investment scheme, means a participant who has an interest or interests in one or more voting units in the scheme and the total votes attached to that unit, or those units, is not less than 5% of the total voting rights of all the voting units in the scheme; or
- (b) a business trust, means a person who has an interest or interests in one or more voting units in the business trust and the total votes attached to that unit, or those units, is not less than 5% of the total voting rights of all the voting units in the business trust;

Existing Provision

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

(ii) in the case of a registered business trust, or of a business trust all or any of the units of which are listed for quotation on a securities exchange —

(A) some or all of the units, or some or all of the units of a particular class, in the business trust made to all unitholders of the business trust, or where the person already holds units in the business trust, made to all other unitholders of the business trust; or

(B) all of the remaining units in the business trust made to all other unitholders of the business trust as a result of the person acquiring or consolidating effective control of that business trust within the meaning of the Take-over Code; or

Proposed Amendment

(iii) in the case of a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any units of which are listed for quotation on a securities exchange —

(A) some or all of the units, or some or all of the units of a particular class, in the scheme made to all unitholders of the scheme, or where the person already holds units in the scheme, made to all other unitholders of the scheme; or

(B) all of the remaining units in the scheme made to all other unitholders of the scheme as a result of the person acquiring or consolidating effective control of that scheme

Existing Provision

(b) a proposed compromise or arrangement which —

(i) in the case of a public company, is referred to in section 210 of the Companies Act (Cap. 50); or

(ii) in the case of a corporation all or any of the shares of which are listed for quotation on a securities exchange, complies with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country or territory in which that corporation was incorporated,

and which, if executed, would result in a change in effective control of the public company or corporation within the meaning of the Take-over Code;

←

...

"transaction information" means information relating to —

(a) offers or invitations to purchase, sell, or exchange securities or futures contracts;

Proposed Amendment

within the meaning of the Take-over Code; or

"temporary representative" means a representative who qualifies as a temporary representative under section 99D.

Existing Provision

(b) executed transactions in securities or futures contracts; or

(c) transactions cleared or settled by a designated clearing house;

Proposed Amendment

“treasury share” means —

- (a) in relation to a company, has the same meaning as in section 4(1) of the Companies Act (Cap. 50); and
- (b) in relation to a corporation (other than a company), such equivalent share within the meaning in paragraph (a) in relation to a company;

“trustee-manager” —

- (a) in relation to a registered business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);
- (b) in relation to a business trust for which an application for registration has been made under section 4(1) of the Business Trusts Act, means the company proposed to be named as the trustee-manager in the application made under that section;
- (c) in relation to a recognised business trust, means the entity which manages and operates the recognised business trust,

<u>Existing Provision</u>	<u>Proposed Amendment</u>
←	by whatever name called and whether incorporated or not; <u>and</u>
"unitholder" , in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act 2004;	(d) <u>in relation to a business trust for which an application for recognition has been made under section 282TA(1) of the Business Trusts Act, means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;</u>
←	<u>"unitholder" —</u>
"voting share" has the same meaning as in section 4 (1) of the Companies Act;	(a) <u>in relation to a collective investment scheme, means a participant of the scheme; and</u>
←	(b) <u>in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);</u>
	<u>"voting unit"—</u>
	(a) <u>in relation to a business trust, means an issued unit in the business trust, not being —</u>
	(i) <u>a unit which, in no circumstances, is there attached a right to vote; or</u>

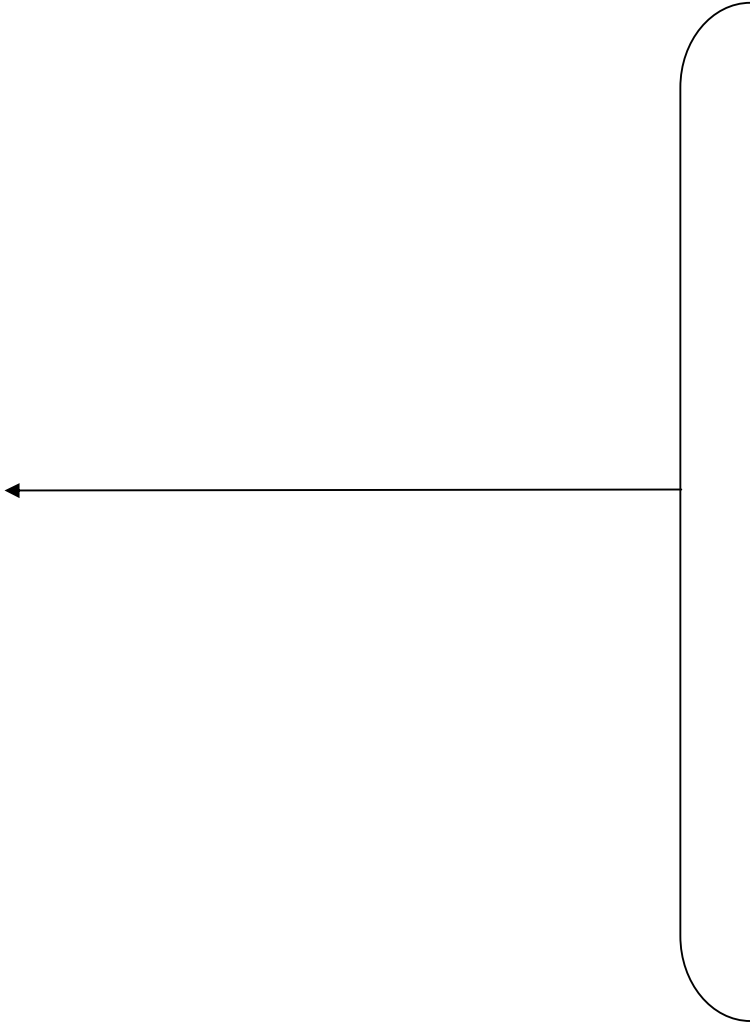
Existing Provision

Proposed Amendment

- (ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:
- (A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrear;
 - (B) upon a proposal to reduce the unitholders' equity of the business trust;
 - (C) upon a proposal that affects rights attached to the unit;
 - (D) upon a proposal to wind up the business trust;
 - (E) upon a proposal for the disposal of the whole of the property, business and undertakings of the business trust;
 - (F) during the winding up of the business trust; and

Existing Provision

Proposed Amendment

- 
- (b) in relation to a collective investment scheme, means an issued unit in the scheme, not being —
- (i) a unit which, in no circumstances, is there attached a right to vote; or
- (ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:
- (A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrear;
- (B) upon a proposal to reduce the participants' funds of the scheme;
- (C) upon a proposal that affects rights attached to the unit;
- (D) upon a proposal to wind up the scheme;
- (E) upon a proposal for the disposal of the whole

<u>Existing Provision</u>	<u>Proposed Amendment</u>
←	<u>of the property, business and undertakings of the scheme;</u>
	(F) <u>during the winding up of the scheme.</u>
	<i><u>New provision, immediately after section 16</u></i>
←	<u>Obligation to manage risks prudently</u>
	<u>16A.—(1) Without prejudice to the generality of section 16(1)(b), an approved exchange shall —</u>
	<u>(a) ensure that the systems and controls concerning the assessment and management of risks to its market are adequate and appropriate for the scale and nature of its operations; and</u>
	<u>(b) establish and determine any limits on the number of open positions which may be held by any person under a futures contract traded on every futures market it operates, subject to the approval of the Authority.</u>
	<u>(2) Nothing in this section shall preclude an approved exchange from —</u>

Existing Provision

Proposed Amendment

(a) establishing or determining different position limits for different futures contracts, or for different months or days in the period remaining until the last day of trading in the futures contract ; or

(b) establishing or determining limits whether on long or short positions, and whether on a net or gross basis.

(3) Without prejudice to the generality of section 45, the Authority may make regulations relating to the matters in subsection (1), including —

(a) the limits in respect of positions held under a futures contract traded on every futures market operated by an approved exchange; and

(b) the measures to manage any risks assumed by the approved exchange.

(4) Any person who wilfully exceeds any position limit fixed by the approved exchange under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

Existing Provision

Fixing of position and trading limits in futures contracts

~~31. (1) For the purpose of diminishing, eliminating or preventing excessive speculation in any commodity under a futures contract, the Authority, or an approved exchange with the approval of the Authority, may, by notice in writing from time to time, establish and fix such limits as it considers necessary on the amount of trading which may be done, or positions which may be held, by any person, generally or specifically, under a futures contract traded on the futures market, or traded subject to the business rules, of—~~

~~(a) in the case of the establishing and fixing of limits by the Authority, any approved exchange; or~~

~~(b) in the case of the establishing and fixing of limits by an approved exchange, that approved exchange.~~

~~(2) In determining whether a person has exceeded such limits, the positions held and trading done by any other person directly or indirectly controlled by the first-mentioned person shall be included with the positions held and trading done by the first-mentioned person.~~

Proposed Amendment

Action by Authority if approved exchange is unable to meet obligations, etc.

31. —(1) Where —

(a) an approved exchange informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(b) an approved exchange becomes unable to meet its obligations, or is insolvent, or suspends payments;

(c) the Authority is of the opinion that the approved exchange
=

(i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 5;

(ii) is or is likely to become insolvent or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;

(iii) has contravened any of the provisions of this Act;

Existing Provision

Proposed Amendment

or

(iv) has failed to comply with any condition attached to its approval as an approved exchange; or

(d) the Authority considers it in the public interest to do so,

the Authority may appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise that approved exchange on the proper management of such of the business of that approved exchange as the Authority may determine.

(2) Where the Authority has exercised any power under subsection (1), it may, at any time and without prejudice to its power under section 13(1), do one or more of the following:

(a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

(b) exercise its powers under subsection (1);

(c) add to, vary or revoke any term or condition specified by

Existing Provision

Proposed Amendment

the Authority under this section.

(3) No action, suit or other legal proceedings shall lie against a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

(a) the exercise or purported exercise of any power under this Act;

(b) the performance or purported performance of any function or duty under this Act; or

(c) the compliance or purported compliance with this Act.

(4) The Authority may at any time fix the remuneration and expenses to be paid by an approved exchange to a statutory adviser appointed in relation to the approved exchange, whether or not the appointment has been terminated.

(5) There shall be recoverable as a civil debt due to the Authority from the approved exchange any remuneration and expenses payable by the approved exchange to a statutory adviser appointed under subsection (1).

Existing Provision

Proposed Amendment

New provision, immediately after section 43

Power of Authority to exempt recognised market operators from provisions of this Part

43A. The Authority may exempt a recognised market operator or a class of recognised market operators from any of the provisions in this Part if it is satisfied that the non-compliance by such recognised market operators or class of recognised market operators with such provision would not detract from the objectives specified in section 5, subject to such conditions or restrictions as may be imposed by the Authority. Authority.

PART III
Clearing Facilities

Interpretation of this Part

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

"default rules" , in relation to a designated clearing house, means the business rules of the designated clearing house which provide for the taking of proceedings or other action if a participant has failed, or appears to be unable or to be likely to become unable, to

meet his obligations for all unsettled or open market contracts to which he is a party;

any

Existing Provision

Obligation to manage risks prudently ←

~~61.—(1) Without prejudice to the generality of section 59 (1) (b), a designated clearing house shall ensure that the systems and controls concerning the assessment and management of risks to its clearing facility are adequate and appropriate for the scale and nature of its operations.~~

~~(2) Without prejudice to the generality of section 81S, the Authority may make regulations relating to the matters in subsection (1), including—~~

~~(a) the limits in respect of positions held with the designated clearing house; and~~

~~(b) the measures to manage any risks assumed by the designated clearing house.~~

Proposed Amendment

Obligation to manage risks prudently

61.—(1) Without prejudice to the generality of section 59(1)(b), a designated clearing house shall —

(a) ensure that the systems and controls concerning the assessment and management of risks to its clearing facility are adequate and appropriate for the scale and nature of its operations; and

(b) establish and determine any limits on the number of open positions which may be held by any person with the designated clearing house, subject to the approval of the Authority.

(2) Nothing in this section shall preclude a designated clearing house from —

(a) establishing or determining, in respect of positions held with the designated clearing house, different position limits for different months or days in the period the positions are held or may be held with the designated clearing house; or

(b) establishing or determining limits whether on long or short positions, and whether on a net or gross basis.

Existing Provision

Proposed Amendment

(3) Without prejudice to the generality of section 81S, the Authority may make regulations relating to the matters in subsection (1), including —

(a) the limits in respect of positions held with the designated clearing house; and

(b) the measures to manage any risks assumed by the designated clearing house.

(4) Any person who wilfully exceeds any position limit fixed by the designated clearing house under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

Obligation in relation to customers' money and assets held by designated clearing house

62. —(1) A designated clearing house which accepts money or assets deposited with or paid to it by its members in respect of or in relation to contracts of the customers of such members shall, in respect of all market contracts in relation to which money or assets are deposited with or paid to it (being market contracts which are cleared or settled by it), require each of its members to notify it in such manner as it may determine —

(a) whether a market contract is a contract of a customer of

Existing Provision

the member; and

(b) whether the money or assets being deposited with or paid to the designated clearing house is or are deposited or paid in respect of or in relation to a contract of a customer of the member.

~~(2) Where a member has notified the designated clearing house under subsection (1) that the money or assets are deposited or paid in respect of or in relation to a contract of a customer of the member, the designated clearing house shall —~~

~~(a) account for all such money and assets on an aggregated basis, separate from all other money and assets received by the designated clearing house from the member; and~~

~~(b) subject to sections 63 and 64, ensure that such money is deposited in a trust account, or such assets are deposited in a custody account, to be held for the benefit of the customers of the member and disposed of or used only in respect of or in relation to contracts of customers of the member.~~

~~(3) Where a designated clearing house has been convicted of an offence under section 70 for a contravention of subsection (2) (b), in so far as any money which has been deposited in a trust account, or any asset which has been deposited in a custody account, is used for any purpose other than —~~

~~(a) in respect of or in relation to contracts of a customer of the member; or~~

~~(b) in accordance with sections 63 and 64, the designated clearing house shall —~~

Proposed Amendment

(2) Where a member has notified the designated clearing house under subsection (1) that the money or assets are deposited or paid in respect of or in relation to a contract of a customer of the member, the designated clearing house shall —

(a) subject to sections 63 and 64, ensure that such money is deposited in a trust account, or such assets are deposited in a custody account, to be held for the benefit of the customers of the member and disposed of or used only in respect of or in relation to contracts of customers of the member;

(b) ensure that such money or assets are kept separate from all money and assets received by the designated clearing house from members which, pursuant to subsection (1), have been reported by members as not being deposited or paid in respect of or in relation to a contract of a customer of a member; and

(c) keep books for money or assets deposited or paid in respect of or in relation to a customer or customers of one member separate from books for money or assets deposited or paid in respect of or in relation to a customer or customers of another member.

(2A) Nothing in this section shall prevent a designated clearing house from commingling such money or assets, deposited pursuant to subsection (2)(a) in the same trust account or custody account, as the

Existing Provision

~~(i) in the case of money, repay the money to the trust account referred to in subsection (2) (b); or~~

~~(ii) in the case of assets —~~

~~(A) return the asset to the custody account referred to in subsection (2) (b); or~~

~~(B) if the asset cannot be returned to the custody account, deposit an amount of money which is equivalent to the monetary value of the asset at the time of the contravention of subsection (2) (b) in a trust account referred to in subsection (2) (b) for the benefit of the customers of the member.~~

Proposed Amendment

case may be.

(3) Where a designated clearing house has been convicted of an offence under section 70 for a contravention of subsection (2)(a), in so far as any money which has been deposited in a trust account, or any asset which has been deposited in a custody account, is used for any purpose other than —

(a) in respect of or in relation to contracts of a customer of the member; or

(b) in accordance with sections 63 and 64,

the designated clearing house shall —

(i) in the case of money, repay the money to the trust account referred to in subsection (2)(a); or

(ii) in the case of assets —

(A) return the asset to the custody account referred to in subsection (2)(a); or

Existing Provision

Proposed Amendment

(B) if the asset cannot be returned to the custody account, deposit an amount of money which is equivalent to the monetary value of the asset at the time of the contravention of subsection (2)(a) in the trust account referred to in subsection (2)(a) for the benefit of the customers of the member.

Permissible use of customers' money and assets by designated clearing house

~~63.— (1) Where a member of a designated clearing house fails to meet its obligations to the designated clearing house, the designated clearing house may use any money or assets deposited or paid in respect of or in relation to contracts of customers of the member and held by the designated clearing house, including any money deposited in the trust account and any assets deposited in the custody account referred to in section 62(2)(b), to meet the obligations of the member to the designated clearing house, if the designated clearing house has reasonable grounds for forming an opinion that —~~

~~(a) — the failure of the member to meet the member's obligations is directly attributable to the failure of any of the customers of the member to meet that customer's obligations under any market contract; and~~

Permissible use of customers' money and assets by designated clearing house

63.— (1) Where a member of a designated clearing house fails to meet its obligations to the designated clearing house, the designated clearing house may use any money or assets deposited or paid in respect of or in relation to contracts of customers of the member and held by the designated clearing house (including any money deposited in the trust account and any assets deposited in the custody account referred to in section 62(2)(a)) (collectively referred to in this section as the customers' money and assets) to meet the obligations of the member to the designated clearing house, if –

(a) the designated clearing house is of the opinion, formed in good faith, that the failure of the member to meet the member's obligations is directly attributable to the failure of any of the customers of the member to meet that customer's obligations under any market contract; and

(b) where –

Existing Provision

~~(b) — the failure to use the money or assets to meet the obligations of the member may jeopardise the financial integrity of the designated clearing house.~~

~~(2) A designated clearing house shall notify the Authority prior to using any such money or assets in the circumstances specified in subsection (1).~~

Proposed Amendment

(i) the money or assets deposited or paid in respect of or in relation to contracts of the member and held by the designated clearing house, and any other money or assets deposited by the member with the designated clearing house as collateral or guarantee for the purpose of satisfying all obligations of the member to the designated clearing house, have been wholly utilised to meet the obligations of the member to the designated clearing house, but in such event, the customers' money or assets shall only be used by the designated clearing house to meet the obligations of the member to the designated clearing house that are outstanding; or

(ii) the designated clearing house has reasonable grounds for forming an opinion that the failure to use the money or assets to meet the obligations of the member may jeopardise the financial integrity of the designated clearing house;

(c) the designated clearing house has made provision for –

(i) the matters set out under (a) and (b); or

(ii) such similar matters which do not detract from the type and scope of the matters set out under (a) and (b).

Existing Provision

Proposed Amendment

in its business rules; and

(d) the money or assets are used in accordance with the provisions of the business rules referred to under (c).

(2) A designated clearing house shall notify the Authority prior to using any such money or assets in the circumstances specified in subsection (1).

New provision, immediately after section 80

Action by Authority if designated clearing house is unable to meet obligations, etc.

80A. —(1) Without prejudice to the powers conferred on the Authority under section 80, where —

(a) a designated clearing house informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(b) a designated clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;

Existing Provision

Proposed Amendment

(c) the Authority is of the opinion that the designated clearing house —

(i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 47;

(ii) is or is likely to become insolvent or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition attached to its approval as an approved exchange; or

(d) the Authority considers it in the public interest to do so, the Authority may appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise that the designated clearing house on the proper management of such of the business of that designated clearing house as the Authority may determine.

(2) Where the Authority has exercised any power under subsection (1).

Existing Provision

Proposed Amendment

it may, at any time and without prejudice to its power under section 54(2), do one or more of the following:

(a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in exercise of such power, on such terms and conditions as it may specify;

(b) exercise its powers under subsection (1);

(c) add to, vary or revoke any term or condition specified by the Authority under this section.

(3) No action, suit or other legal proceedings shall lie against a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with—

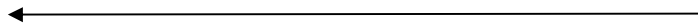
(a) the exercise or purported exercise of any power under this Act;

(b) the performance or purported performance of any function or duty under this Act; or

(c) the compliance or purported compliance with this Act.

Existing Provision

Proposed Amendment

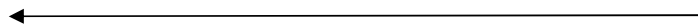


(4) The Authority may at any time fix the remuneration and expenses to be paid by a designated clearing house to a statutory adviser appointed in relation to the designated clearing house, whether or not the appointment has been terminated.

(5) There shall be recoverable as a civil debt due to the Authority from the approved exchange any remuneration and expenses payable by the approved exchange to a statutory adviser appointed under subsection (1).

Requirement for approval

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



(2) Any corporation which contravenes subsection (1) 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.

No corporation shall be the holding company of any approved exchange, designated clearing house, or corporation which is an approved holding company, unless —

(a) the first-mentioned corporation is an approved holding company; or

(b) the first-mentioned corporation has been exempted by the Authority from complying with subsection (1) pursuant to section 81VA.

Existing Provision

Proposed Amendment

New provision, immediately after section 81V

81VA.—The Authority may exempt a holding company of a corporation approved as an approved exchange under section 8(1) or designated as a designated clearing house under section 55(1), from the requirement under section 81U to be an approved holding company if it is satisfied that the exemption would not detract from the objectives specified in section 81T, subject to such conditions or restrictions as may be imposed by the Authority.

PART IV

**~~CAPITAL MARKETS SERVICES LICENCE AND
REPRESENTATIVE'S LICENCE~~**

**HOLDERS OF CAPITAL MARKETS SERVICES LICENCE
AND REPRESENTATIVES**

Division 1—~~Licensing~~

Capital Markets Services Licence

Need for capital markets services licence

82. —(1) Subject to subsection (2) and section 99, no person shall, whether as principal or agent, carry on business in any regulated activity or hold himself out as carrying on such business unless he is the holder of a capital markets services licence for that regulated activity.

(2) Subsection (1) shall not apply to any person specified in the Third Schedule.

Existing Provision

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[SIA, s. 24 and s. 26; FTA, s. 11]

Proposed Amendment

~~Need for representative's licence~~

83.—(1) ~~Subject to subsection (2), no person shall act as a representative in respect of any regulated activity or hold himself out as doing so, unless—~~

~~(a) he is the holder of a representative's licence for that regulated activity; and~~

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

~~{1/2005}~~

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

~~(a) to any person who acts as a representative of an exempt person, in so far as—~~

Existing Provision

(i) the type and scope of regulated activity carried out by the first mentioned person are within the type and scope of, or are the same as, those carried out by the exempt person (in his capacity as an exempt person); and

(ii) the manner in which the first mentioned person carries out the regulated activity referred to in subsection (1) is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out the regulated activity; and

(b) to any person or class of persons whom the Authority may exempt from holding a representative's licence in respect of any regulated activity.

~~{1/2005}~~

~~(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not~~

Application for grant or renewal of licence

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

—(a) made to the Authority in such form and manner as the

Proposed Amendment

capital markets services licence

(1) An application for the grant of a capital markets services licence shall be made to the Authority in such form and manner as the Authority may prescribe.

Existing Provision

~~Authority may prescribe; and~~

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

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

~~[1/2005]~~

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

capital markets services licence



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

~~[16/2003]~~

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

Existing Provision

~~{16/2003}~~

~~(5A) An application for the grant of a representative's license in respect of any regulated activity shall be deemed to be withdrawn with effect from the date on which the person who supported the application—~~

~~(a) withdraws his support in writing;~~

~~(b) withdraws his application for a capital markets services licence in respect of that regulated activity; or~~

~~(c) has his application for a capital markets services licence in respect of that regulated activity refused by the Authority.~~

~~{16/2003}~~

~~(5B) An application for the renewal of a representative's licence in respect of any regulated activity shall be deemed to be withdrawn with effect from the date on which the person who supported the application withdraws his support in writing.~~

~~{16/2003}~~

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

Proposed Amendment

Existing Provision

~~(7) Where a person would be guilty of an offence for not being the holder of a particular licence, no proceedings shall be instituted against him for the offence for the period from the expiry of that licence until that licence is renewed or his application for renewal is withdrawn or refused if before the expiration of that licence he has applied for renewal of that licence and he complies with the requirements of this Act as though he were the holder of that licence.~~

~~(8) In this section, “licence” and “representative’s licence” do not include a temporary representative’s licence.~~

~~{16/2003}~~

~~[SIA, s. 28; FTA, s. 13]~~

-License fee

85. —(1) ~~A licensed person~~ shall pay such licence fee in respect of each regulated activity as may be prescribed by the Authority.

(2) Any licence fee paid to the Authority in respect of any regulated activity shall not be refunded if —

(a) the licence is revoked or suspended, or lapses during the period to which the licence fee relates;

~~(b) the licence fee is paid in relation to an application for the renewal of a licence and such application is withdrawn after~~

Proposed Amendment

The holder of a capital markets services licence

Existing Provision

~~the date on which, but for its renewal, the licence would have expired;~~

~~(e) the licensed person —~~

~~(i) being the holder of a capital markets services licence, ceases to carry on business in that regulated activity; or~~

~~(ii) being a representative, ceases to act as a representative in respect of that regulated activity, during the period to which the licence fee relates; or~~

~~(d) a prohibition order has been made against the licensed person under section 95.~~

Proposed Amendment

(c) the holder of a capital markets services licence ceases to carry on business in that regulated activity during the period to which the licence fee relates; or

(d) a prohibition order has been made against the holder of a capital markets services licence under section 101A.

[1/2005]

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund the whole or part of any licence fee paid to it.

[SIA, s. 28; FTA, s. 13]

Grant of capital markets services licence

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

Existing Provision

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

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

[1/2005]

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

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

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

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

Proposed Amendment

Existing Provision

- (c) execution against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (d) a receiver, a receiver and manager, judicial manager or an equivalent person has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the applicant or its substantial shareholder;
- (e) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) the applicant or its substantial shareholder, or any officer of the applicant —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (g) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they

Proposed Amendment

Existing Provision

are to perform in connection with the holding of the license;

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

(i) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers or customers having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;

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

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

(l) there are other circumstances which are likely to —

(i) lead to the improper conduct of business by the applicant, any of its officers, employees or substantial shareholders; or

(ii) reflect discredit on the manner of conducting the

Proposed Amendment

Existing Provision

business of the applicant or its substantial shareholders;

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

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

; or

(o) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.

[16/2003;1/2005]

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

[1/2005]

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

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

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

Proposed Amendment

Existing Provision

Proposed Amendment

applicant;

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

i

(d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.

[16/2003]

[SIA, s. 29; FTA, s. 14 and s. 24]

Grant of representative's licence

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

{16/2003;1/2005}

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

(a) specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate; and

Existing Provision

~~(b) relate the licence to the holder of a capital markets services licence which supported that application for a representative's licence.~~

~~{16/2003}~~

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

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

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

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

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

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

~~(e) the applicant —~~

Proposed Amendment

Existing Provision

~~(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;~~

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

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

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

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

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

Proposed Amendment

Existing Provision

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

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

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

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

~~{16/2003;1/2005}~~

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

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

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

Proposed Amendment

Existing Provision

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

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

~~(ii) punishable with imprisonment for a term of 3 months or more.~~
~~{16/2003}~~

~~(6) In this section, “representative’s licence” does not include a temporary representative’s licence.~~

~~{16/2003}~~

~~{SIA, s. 30; FTA, s. 14}~~

Temporary representative’s licence

87A.—~~(1) An individual may apply to the Authority in such form and manner as the Authority may prescribe for a temporary representative’s licence to act as a representative in respect of one or more regulated activities.~~

~~{16/2003; 1/2005}~~

~~(2) The Authority may require an applicant to furnish it with such information or documents as the Authority considers necessary in~~

Proposed Amendment

Existing Provision

relation to the application.

{1/2005}

~~(3) An application for the grant of a temporary representative's licence shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.~~

{16/2003}

~~(4) An application for the grant of a temporary representative's licence in respect of any regulated activity shall be supported in the prescribed manner by a holder of a capital markets services licence for that regulated activity.~~

{16/2003}

~~(5) An application for the grant of a temporary representative's licence in respect of any regulated activity shall be deemed to be withdrawn with effect from the date the holder of a capital markets services licence which supported the application withdraws its support in writing.~~

{16/2003}

~~(6) The Authority shall not grant a temporary representative's licence to any applicant —~~

~~(a) if the applicant has held a temporary representative's~~

Proposed Amendment

Existing Provision

~~licence for a period which exceeds, or for periods which together exceed, the prescribed number of months within the prescribed period; or~~

~~(b) if the holder of a capital markets services licence which supported the application fails to furnish to the Authority, in respect of any regulated activity to be carried out by the applicant for the holder, an undertaking in such form and manner as may be prescribed by the Authority.~~

~~{16/2003}~~

~~(7) In granting a temporary representative's licence, the Authority~~

~~—~~

~~(a) shall specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate; and~~

~~(b) shall relate the licence to the holder of a capital markets services licence which supported that application for a temporary representative's licence.~~

~~{16/2003}~~

~~(8) A temporary representative's licence shall be in force for a period of 3 months from the date of its issue under this Act, or such other period as the Authority may specify in writing to the holder of the temporary representative's licence.~~

Proposed Amendment

Existing Provision

~~{16/2003}~~

~~(9) A temporary representative's licence shall not be renewable.~~

~~{16/2003}~~

~~(10) Subject to regulations made under this Act, the Authority may refuse an application for the grant of a temporary representative's licence on any of the grounds referred to in section 87 (3) (a) to (n).~~

~~{16/2003}~~

~~(11) Subject to subsection (12), the Authority shall not refuse an application for the grant of a temporary representative's licence without giving the applicant an opportunity to be heard.~~

~~{16/2003}~~

~~(12) The Authority may refuse an application for the grant of a temporary representative's licence on any of the following grounds without giving the applicant an opportunity to be heard:~~

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

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

~~(i) involving fraud or dishonesty or the conviction for~~

Proposed Amendment

Existing Provision

which involved a finding that he had acted fraudulently or dishonestly; and

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

Proposed Amendment

{16/2003}

~~(6) In this section, “representative’s licence” does not include a temporary representative’s licence.~~

{16/2003}

~~*{SIA, s. 30; FTA, s. 14}*~~

Power of Authority to impose conditions or restrictions

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

a capital markets services licence

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

holder of a capital markets service licence

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

its

[SIA, s. 33; FTA, s. 15]

Period of licence

Existing Provision

Proposed Amendment

~~89. — (1) Subject to subsection (2), a licence shall be in force for a period of 3 years or such other period as the Authority may specify in writing to the licensed person, from the date of its issue under this Act.~~

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

~~(3) In this section —~~

~~"licence" does not include a temporary representative's licence;
"licensed person" does not include a holder of a temporary representative's licence.~~

~~[16/2003]~~

~~[SIA, s. 35; FTA, s. 16]~~

Variation of licence

90. —~~(1) The Authority may, on the application of a licensed person, vary his licence by adding a regulated activity to those already specified in the licence.~~

~~[16/2003]~~

~~(1A) The Authority may require an applicant to supply the~~

capital markets services licence

(1) The Authority may, on the application of a holder of a capital markets services licence, vary its licence by adding a regulated activity to those already specified in the licence.

Existing Provision

Authority with such information or documents as it considers necessary in relation to the application.

[16/2003]

~~(2) An application under subsection (1) shall~~

~~—(a) be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority; and~~

~~(b) if made in respect of a representative's licence, be supported in the prescribed manner by such person, who is~~
~~—~~

~~(i) the holder of a capital markets services licence for that regulated activity; or~~

~~(ii) the holder of a capital markets services licence which has applied under subsection (1) to add to its licence that regulated activity, as may be specified by the Authority.~~

~~*[16/2003]*~~

~~(2A) An application under subsection (1), if made in respect of a representative's licence, shall be deemed to be withdrawn with effect from the date on which the holder of a capital markets services licence which supported the application—~~

Proposed Amendment

(2) An application under subsection (1) shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.”

Existing Provision

~~(a) withdraws its support in writing;~~

~~(b) withdraws its application to add to its licence that regulated activity; or~~

~~(c) has its application to add to its licence that regulated activity refused by the Authority.~~

~~[16/2003]~~

(3) The Authority may —

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

(b) refuse the application on any of the grounds set out in section 86 (4), ~~87 (3) or 87A (10).~~

[16/2003]

(4) The Authority shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

[16/2003]

Deposit to be lodged in respect of capital markets services licence

91. —(1) The Authority may, in granting, ~~renewing~~ or varying a capital markets services licence, require the applicant to lodge with

Proposed Amendment

Existing Provision

the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount in cash or in such other form as the Authority may prescribe in respect of that licence.

(2) The Authority may prescribe the circumstances and purposes for the use of the deposit.

[SIA, s. 34]

Proposed Amendment

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

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

(a) without reasonable excuse, makes a statement which is false or misleading in a material particular; or

(b) without reasonable excuse, omits to state any matter or thing without which the application is misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

capital markets services licence

capital markets services licence

[1/2005]

Existing Provision

Notification of change of particulars

93. —(1) Where—

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

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

~~(c) a change occurs in any matter particulars of which are required by section 94 to be entered in the register of licensed persons in relation to the licensed person;~~

~~the licensed person shall, not later than 14 days after the occurrence of the event, furnish particulars of the event to the Authority in the prescribed form and manner.~~

↓
(2) Where a ~~licensed person ceases to carry on, or ceases to act as a representative in carrying on,~~ business in all the regulated activities to which the licence relates, it shall return the licence to the Authority within 14 days of the date of the cessation.

Proposed Amendment

(1) Where —

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

(b) a change occurs in any matter particulars of which are required by section 94 to be entered in the record of holders of a capital markets services licence in relation to the holder,

the holder shall, not later than 14 days after the occurrence of the event, furnish particulars of the event to the Authority in the prescribed form and manner.

holder of a capital markets services licence ceases to carry on

[16/2003]

[SIA, s. 36; FTA, s. 17]

Existing Provision

Register of licensed persons ←

~~94. The Authority shall keep in such form as it thinks fit a register of licensed persons specifying —~~

~~(a) in relation to the holder of a capital markets services licence —~~

~~(i) its name;~~

~~(ii) the address of the principal place of business at which it carries on the business in respect of which the licence is held;~~

~~(iii) the regulated activity or activities to which its licence relates;~~

~~(iv) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and~~

~~(v) such other information as may be prescribed;~~

~~(b) in relation to the holder of a representative's licence —~~

~~(i) his name;~~

~~(ii) the name of his principal in relation to whom the licence was granted;~~

~~(iii) the regulated activity or activities to which his licence relates;~~

Proposed Amendment

“Record in relation to holders of capital markets services licence

94. —(1) The Authority shall keep in such form as it thinks fit a record in relation to the holder of a capital markets services licence of

—

(a) its name;

(b) the address of the principal place of business at which it carries on the business in respect of which the licence is held;

(c) the regulated activity or activities to which its licence relates;

(d) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and

(e) such other information as may be prescribed.

(2) The Authority may publish the information referred to in subsection (1), or any part of it in a financial institutions directory, set out at the Authority's Internet website at <http://www.mas.gov.sg>.”

Existing Provision

~~(iv) where the business of his principal is carried on under a name or style, other than the name of the principal, the name or style under which that business is carried on; and~~

~~(v) such other information as may be prescribed.~~

~~[SIA, s. 37; FTA, s. 19]~~

~~Lapsing, revocation and suspension of — licence~~

~~95. — (1) A — licence shall lapse —~~

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

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

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

~~(2) The Authority may revoke a — licence —~~

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

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

Proposed Amendment

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

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

Existing Provision

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

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

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

~~(v) the Authority has reason to believe that the holder of the capital markets services licence 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; or~~

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

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

~~(i) there exists a ground on which the Authority may refuse an application under section 87 or 87A (as the~~

Proposed Amendment

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

(e) the Authority has reason to believe that the holder of the capital markets services licence 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; or

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

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

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

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

(4) Subject to subsection (5), the Authority shall not revoke or suspend a capital markets services licence under subsection (2) or (3) without giving the holder of the licence an opportunity to be heard.

Existing Provision

ease may be);

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

(iii) the licence of his principal is revoked;

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

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

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

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

~~{16/2003;1/2005}~~

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

(a) suspend a — licence for a specific period instead of

Proposed Amendment

(5) The Authority may revoke or suspend a capital markets services licence without giving the holder of the licence an opportunity to be heard, on any of the following grounds:

(a) the holder 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 holder ;

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

(d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the holder.

(6) Where the Authority has revoked or suspended a capital markets services licence or issued a prohibition order to a holder of a capital markets services licence, the holder of that licence shall —

Existing Provision

~~revoking it under subsection (2); and~~

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

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

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

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

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

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

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

~~(b) in the case of a representative's licence, on any of the~~

Proposed Amendment

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

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

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

(7) Any holder of a capital markets services licence who —

(a) performs a regulated activity while its licence has lapsed or has been revoked or suspended; or

(b) contravenes subsection (6),

Existing Provision

following grounds:

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

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

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

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

~~{16/2003}~~

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

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

~~(8) Where the Authority has revoked or suspended a capital markets services licence or issued a prohibition order to a holder of~~

Proposed Amendment

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.

(8) A lapsing, revocation or suspension of a capital markets services licence shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the holder of the licence, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or lapsing of the licence, as the case may be; or

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

Existing Provision

~~a capital markets services licence, that holder shall —~~

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

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

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

~~(9) Any licensed person who —~~

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

~~(b) contravenes subsection (8);~~

Proposed Amendment

Existing Provision

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

~~(10) A lapsing, revocation, — suspension or expiry of a — licence of a person or the issue of a prohibition order shall not operate so as to —~~

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

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

~~{SIA, s. 38; FTA, s. 20 and s. 22}~~

Proposed Amendment

Existing Provision

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

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

(a) ~~its chief executive officer;~~

(b) ~~its director where, upon appointment, the person resides or is to reside in Singapore, whether or not he is directly responsible for its business in Singapore or any part thereof; or~~

(c) ~~its director where, upon appointment, the person is directly responsible for its business in Singapore or any part thereof, whether he resides or is to reside in Singapore or elsewhere;~~

~~unless it has obtained the approval of the Authority.~~

Proposed Amendment

(1) Subject to subsection (1B), no holder of a capital markets services licence shall —

(a) appoint a person as its chief executive officer or director; or

(b) change the nature of an appointment of a director from a non-executive to executive capacity,

unless it has obtained the approval of the Authority.

[16/2003]

(1A) Where a holder of a capital markets services licence has obtained the approval of the Authority to appoint a person as its chief executive officer or director under ~~subsection (1)~~, the person may be re-appointed as chief executive officer or director, as the case may be, of the holder immediately upon the expiry of the earlier term without the approval of the Authority.

subsection (1)(a)

Existing Provision

[16/2003]

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

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

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

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

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

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

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

Proposed Amendment

(1B) Subsection (1) shall not apply to the appointment of a person as a director or the change in the nature of an appointment of a director of a foreign company, where, upon the appointment or change, as the case may be, the person —

(a) does not or will not, reside in Singapore; and

(b) is not or will not be, directly responsible for its business in Singapore or any part thereof.

(aa) a prohibition order under Section 101A has been made by the Authority, and remains in force, against the person;

Existing Provision

[16/2003]

Proposed Amendment

(5) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

Removal of officer of holder of capital markets services licence

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

- (a) has wilfully contravened or wilfully caused that holder to contravene this Act;
- (b) has without reasonable excuse failed to enforce compliance with this Act;
- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors,

Existing Provision

being a compromise or scheme of arrangement that is still in operation;~~or~~

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

Proposed Amendment

(fa) has had a prohibition order under section 101A made by the Authority against him that remains in force;

; or (h) is not a fit and proper person.

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

[1/2005]

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

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

[1/2005]

Existing Provision

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

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

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

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

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

[16/2003]

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

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

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

Proposed Amendment

(aa) a prohibition order under Section 101A has been made by the Authority, and remains in force, against the officer;

Existing Provision

(b) any person acting on behalf of the holder of a capital markets services licence, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

Proposed Amendment

Control of take-over of holder of capital markets services licence

97A – (1) This section shall apply to and in relation to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) No person shall enter into any arrangement in relation to the holder of a capital markets services licence by virtue of which he would, if the arrangement is carried out, obtain effective control of the holder without obtaining the prior approval of the Authority.

(3) Any person intending to enter into any arrangement to obtain effective control of a holder of capital markets services licence under subsection (2) shall apply to the Authority for approval in writing and the Authority may approve such an application made by any person if the Authority is satisfied that –

(a) the person is a fit and proper person;

(b) having regard to the person's likely influence, the holder of a capital markets services licence is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and

Existing Provision

Proposed Amendment

(c) such other criteria as may be prescribed or as may be specified in written directions by the Authority.

(4) Any approval under subsection (3) may be granted to any person subject to such conditions as the Authority may determine, including but not limited to any condition —

(a) restricting the person's disposal or further acquisition of shares or voting power in the holder of a capital markets services licence; or

(b) restricting the person's exercise of voting power in the holder of a capital markets services licence,

and the person shall comply with such conditions.

(5) Any condition imposed under subsection (4) shall have effect notwithstanding any provision of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the holder of a capital markets services licence.

(6) For the purposes of this section —

Existing Provision

Proposed Amendment

(a) “arrangement” includes any formal or informal scheme, arrangement or understanding, and any trust whether express or implied;

(b) a person shall be regarded as entering into an arrangement by virtue of which he would obtain effective control of a holder of a capital markets services licence if the person alone or acting together with any connected person would be in a position to control, directly or indirectly, not less than 20% of the voting power in the holder or would hold interests, directly or indirectly, in not less than 20% of the issued shares of the holder;

(c) a reference to an arrangement by which a person would obtain effective control of a holder of a capital markets services licence includes a reference to an arrangement by which the person would acquire any interest, directly or indirectly, in shares in the holder where, upon the acquisition of those interests and of any other interest in other shares of the holder that he has offered to acquire, he would have effective control of the holder; and

(d) a reference to the voting power in a capital markets services licence is a reference to the total number of votes that may be cast in the general meeting of the holder.

(7) Any person who contravenes subsection (2) shall be guilty of an

Existing Provision

Proposed Amendment

offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

Objection to existing control of holder of capital markets services licence

97B – (1) The Authority may serve a written notice of objection on any person referred to in section 97A if the Authority is satisfied that

—

(a) any condition of approval imposed on the person under section 97A(4) has not been complied with;

(b) the person is not or ceases to be a fit and proper person;

(c) having regard to the likely influence of the person, the holder of a capital markets services licence is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;

(d) the person has furnished false or misleading information or documents in connection with an application under section 97A;
or

Existing Provision

Proposed Amendment

(e) the Authority would not have granted its approval under section 97A had it been aware, at that time, of circumstances relevant to the person's application for such approval.

(2) The Authority shall not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

(a) the person is in the course of being wound up or otherwise dissolved, or in the case of an individual, in the course of bankruptcy proceedings, whether in Singapore or elsewhere;

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

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

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

Existing Provision

Proposed Amendment

(3) The Authority shall, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection shall –

(a) take such steps as are necessary to ensure that he ceases to be a party to the arrangement described in section 97A (2) or ceases to have effective control of a holder of a capital markets services licence as defined in section 97A(6); or

(b) comply with such other requirements as the Authority may specify in written directions.

(4) Any person served with a notice of objection under this section shall comply with the notice.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

Existing Provision

Proposed Amendment

Appeals

98. —(1) Subject to subsection (2), any person who is aggrieved by —

~~(a) the refusal of the Authority to grant, renew or vary a licence;~~

(b) the revocation or suspension of a ~~licence~~ by the Authority;

~~(c) the issue of a prohibition order by the Authority;~~

(d) the refusal of the Authority to grant an approval to a holder of a capital markets services licence to appoint a person as its chief executive officer or director; or

(e) the direction of the Authority to a holder of a capital markets services licence to remove an officer from office or employment,
may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

(2) An appeal under subsection (1) (d) or (e) may only be made by the holder of a capital markets services licence.

[SIA, s. 39; FTA, s. 23]

(a) the refusal of the Authority to grant or vary a capital markets services licence;

capital markets services licence

Existing Provision

Proposed Amendment

~~Division 2—Exemptions~~

Exemptions from requirement to hold capital markets services licence

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

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

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

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

(d) any company or society registered under the Insurance

Existing Provision

Act (Cap. 142) in respect of fund management for the purpose of carrying out insurance business;

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

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

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

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

[16/2003;1/2005]

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

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

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

Proposed Amendment

Existing Provision

such conditions or restrictions.

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

[1/2005]

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

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

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

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

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

Proposed Amendment

Existing Provision

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

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

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

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

Proposed Amendment

Annual fees payable by exempt person and its representative

99A. —(1) Every exempt person and every representative of an exempt person shall pay to the Authority such annual fee in respect of each regulated activity as may be prescribed and in such manner as may be specified by the Authority.

certain representatives

a person exempted under Section 99(1)(f), (g) or (h)

[1/2005]

Existing Provision

Proposed Amendment

(2) Any annual fee paid by an exempt person or a representative of an exempt person to the Authority in respect of any regulated activity shall not be refunded or remitted if —

a person exempted under Section 99(1)(f), (g) or (h)

(a) in the case of the exempt person —

(i) its exemption is withdrawn; or

(ii) it fails or ceases to carry on business in that regulated activity, during the period to which the annual fee relates; and

(b) in the case of a representative of the exempt person —

(i) his exemption is withdrawn; or

(ii) he fails or ceases to act as a representative in respect of that regulated activity, during the period to which the annual fee relates.

[1/2005]

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

[1/2005]

Existing Provision

Proposed Amendment
Division 2 — Representatives

Acting as a representative

99B. — (1) No person shall act as a representative in respect of any regulated activity or hold himself out as doing so, unless he is —

(a) an appointed representative in respect of such regulated activity that has been notified to the Authority;

(b) a temporary representative in respect of such regulated activity that has been notified to the Authority; or

(c) a representative of an exempt person under section 99(1)(f), (g) or (h), in so far as —

(i) the type and scope of regulated activity carried out by the first-mentioned person are within the type and scope of, or are the same as, those carried out by the exempt person (in his capacity as an exempt person); and

(ii) the manner in which the first-mentioned person carries out the regulated activity referred to in subsection (1) is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out the regulated activity.

(2) The Authority may exempt any person or class of persons from subsection (1), subject to such conditions or restrictions as may be imposed by the Authority.

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

Appointed representative

99C. — (1) A person may act as an appointed representative to carry on business in respect of one or more regulated activities if —

(a) the person is an individual;

(b) the following documents have been lodged by his principal with the Authority in such form and manner as the Authority may prescribe:

(i) a notice of intent by the principal to appoint the individual to act as an appointed representative; and

(ii) a certification by the principal that the individual is a fit and proper person to be an appointed representative;

(c) his name has been listed on the Authority's public register of representatives; and

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(d) he carries on business only in the regulated activities that –

(i) his principal is licensed to carry on; or

(ii) are carried out by his principal in his capacity as a person exempted from the requirement to hold a capital markets services licence under section 99 (1)(a), (b), (c) and (d).

(2) The Authority may require the principal or individual to furnish it with such information or documents as the Authority considers necessary in relation to the intended appointment of the individual as an appointed representative and the principal or the individual, as the case may be, shall comply with such a request.

(3) An individual shall immediately cease to act as an appointed representative to carry on business in any regulated activity on the date —

(a) of his cessation to act as an appointed representative, as notified by his principal to the Authority, in such form and manner as the Authority may prescribe;

(b) his principal ceases to carry on business in that regulated activity;

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(c) the licence of his principal in respect of that regulated activity is revoked, has lapsed or if a prohibition order is made against the principal;

(d) the individual dies; or

(e) of such other circumstances as the Authority may prescribe, whichever is earlier

(4) An individual shall not carry on business in a regulated activity as an appointed representative during the period in which the licence of his principal in respect of that regulated activity is suspended

(5) An individual who is not allowed to carry on business in a regulated activity under subsection (4) and who has ceased to act as a representative of the principal who has been suspended may, subject to compliance with subsection (1), carry on business in a regulated activity as an appointed representative for a new principal.

(6) A cessation by an individual to carry on business in any regulated activity under subsection (3) or where an individual does not carry on business in any regulated activity by virtue of him not being allowed to carry on business under subsection (4) shall not operate so as to –

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

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

(7) Where the individual is required to cease to act as an appointed representative under subsection (3) or is not allowed to carry on business under subsection (4), the Authority need not give the individual an opportunity to be heard.

(8) A principal shall not permit any individual to carry on business in any regulated activity on its behalf as its appointed representative unless the individual is an appointed representative under subsection (1) and the principal has lodged the documents required under subsection (1)(b).

(9) Subject to subsection (10), where a change occurs in any particulars of the appointed representative required to be furnished to the Authority under subsection 1(b), the principal shall, no later than 14 days after the occurrence of such change, furnish particulars of such change to the Authority, in the prescribed form and manner.

(10) Where -

(a) the individual ceases to act as an appointed representative for his principal; or

(b) the individual ceases to carry on business in any of the regulated activities which he is appointed to carry on; the principal shall, no later than the next business day after such cessation, furnish particulars of such cessation to the Authority,

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in the prescribed form and manner.

(11) The principal shall make such notification and in such form and manner as may be prescribed by the Authority.

(12) Where a person satisfies all the requirements of an appointed representative under this section but for the examination requirements issued by way of written directions under section 101 of the Act by the Authority, the Authority may allow such a person to act as an appointed representative for such period of time as the Authority may prescribe or such other period as the Authority may by notice in writing allow, in respect of such notified regulated activity (referred to in this Act as a provisional representative), subject to the following conditions:

(a) the principal lodges with the Authority in such form and manner as the Authority may prescribe an undertaking in respect of its intent to appoint an individual to act as a provisional representative;

(b) that the person thereafter satisfies the examination requirements in respect of the notified regulated activities within such period as may be prescribed by the Authority or such other period as the Authority may by notice in writing allow;

(c) that the person satisfies such other conditions and restrictions as the Authority may impose; and

(d) that the person is not, by virtue of the circumstances

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prescribed by the Authority, disqualified from acting as a provisional representative.

(13) If a person who is allowed to act as a provisional representative under subsection (12) fails to comply with such conditions and restrictions as may be imposed by the Authority under that subsection, that person shall immediately cease to act as a provisional representative.

(14) Where the provisional representative has satisfied the examination requirements within the period prescribed or allowed by the Authority under subsection (12)(b), the principal of a provisional representative shall inform the Authority, in the prescribed form and manner that the provisional representative has satisfied the examination requirements in respect of the relevant notified regulated activity.

(15) Upon notification by the principal under subsection (14), the provisional representative shall cease to be a provisional representative and may act as an appointed representative to carry on business in respect of such notified regulated activity.

(16) For the avoidance of doubt, nothing shall prevent the principal of a provisional representative from informing the Authority of the satisfaction of the examination requirements in respect of any notified regulated activity under subsection (14) before the expiry of the prescribed period, or such other period of time as allowed by the Authority, under subsection (12)(b) provided that upon the principal informing the Authority of the satisfaction of the examination requirements in respect of any notified regulated activity, the

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provisional representative shall immediately cease to act as a provisional representative to carry on business in respect of such other notified regulated activity for which the examination requirements have not been satisfied.

(17) Where the principal of a provisional representative fails to inform the Authority that the provisional representative has completed the examination requirements by the prescribed period, or such other period of time as allowed by the Authority, under subsection (12)(b), the provisional representative shall immediately cease to act as a provisional representative.

(18) Any person who contravenes subsection (1), (2), (3), (4), (13) or (17) 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.

(19) Any person who contravenes subsection (8), (9), (10), (11) or (14) 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.

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

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Temporary Representative

99D. —(1) A person may act as a temporary representative to carry on business in respect of one or more regulated activities if -

(a) the person is an individual;

(b) the following documents have been lodged by his principal with the Authority in such form and manner as the Authority may prescribe:

(i) a notice of intent by the principal to appoint an individual to act as a temporary representative; and

(ii) a certification by the principal that the individual is a fit and proper person to be a temporary representative;

(iii) an undertaking in respect of its intent to appoint an individual to act as a temporary representative;

(c) his name has been listed on the Authority's public register of representatives;

(d) he carries on business only in the regulated activities that –

(i) his principal is licensed to carry on; or

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(ii) are carried out by his principal in his capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d); and

(e) the laws and practices of the jurisdictions in which the person is licensed, authorised or otherwise regulated as a person who is equivalent of a representative are comparable to the requirements of an appointed representative under this Part.

(2) The Authority may require the principal or the individual to furnish it with such information or documents as the Authority considers necessary in relation to the intended appointment of the individual as a temporary representative and the principal or the individual, as the case may be, shall comply with such a request.

(3) A notification by the principal to the Authority in relation to its appointment of an individual to act as a temporary representative in respect of any regulated activity shall be deemed to be withdrawn with effect from the date the principal withdraws its support in the form and manner as the Authority may prescribe.

(4) An individual shall immediately cease to act as a temporary representative to carry on business in any regulated activity –

(a) upon the expiry of such period as may be prescribed by the Authority, or such other period as the Authority may specify in writing to the principal;

(b) from the date on which the principal notifies the Authority

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that the individual ceases to act as a temporary representative;

(c) if his principal ceases to carry on business in that regulated activity;

(d) if the licence of his principal in respect of that regulated activity is revoked, has lapsed or if a prohibition order is made against the principal;

(e) the individual dies; or

(f) of such other circumstances as the Authority may prescribe,

whichever is earlier.

(5) An individual shall not carry on business in a regulated activity as an appointed representative during the period in which the licence of his principal in respect of that regulated activity is suspended.

(6) A cessation by an individual to carry on business in any regulated activity under subsection (4) or where an individual does not carry on business in any regulated activity by virtue of him not being allowed to carry on business under subsection (5) shall not operate so as to –

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

(b) affect any right, obligation or liability arising under any such

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agreement, transaction or arrangement.

(7) Where the individual is required to cease to act as a temporary representative under subsection (4) or is not allowed to carry on business under subsection (5), the Authority need not give the individual an opportunity to be heard.

(8) A principal shall not permit any individual to carry on business in any regulated activity on its behalf as its temporary representative unless the individual is a temporary representative under subsection (1).

(9) The Authority shall remove a temporary representative from, the public register of representatives if the individual has been a temporary representative for a period which exceeds, or for periods which together exceed, the prescribed number of months within the prescribed period.

(10) Subject to subsection (11), where a change occurs in any particulars of the temporary representative required to be furnished to the Authority under subsection (1b), the principal shall, no later than 14 days after the occurrence of such change, furnish particulars of such change to the Authority, in the prescribed form and manner.

(11) Where –

(a) the temporary representative ceases to act for the principal who notified the Authority of the intent to appoint the individual as a temporary representative; or

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(b) the temporary representative ceases to carry on business in any regulated activity;

the principal shall, no later than the next business day after such cessation, furnish particulars of such cessation to the Authority, in the prescribed form and manner.

(12) Subsection (1) shall not apply to any principal, person or class of persons whom the Authority may exempt from the requirement to notify the Authority of the intention to appoint an individual to act as temporary representative in respect of any regulated activity.

(13) Any person who contravenes subsection (1), (2), (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 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.

(14) Any person who contravenes subsection (8), (10), or (11) 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.

Notification and annual fees

99E. —(1) A principal shall pay such notification fee in relation to the notification of an individual intending to act as his appointed representative or temporary representative as may be prescribed by

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the Authority.

(2) A principal shall pay such annual fee in relation to the notification of an individual intending to act as his appointed representative or temporary representative as may be prescribed by the Authority.

(3) A principal shall pay such fee in relation to any resubmission of a form or change in particulars of a form lodged with the Authority as may be prescribed by the Authority.

(4) Unless otherwise prescribed by the Authority, any fee paid to the Authority under this section shall not be refunded.

(5) Where the principal fails to pay such notification fee or annual fee, as the case may be, by the day on which the fee is due, the Authority may impose a late payment fee not exceeding \$100 for every day or part thereof that the payment is late, subject to a maximum of \$3,000.

Additional regulated activity

99F. —(1) An appointed representative under section 99C (other than a provisional representative) may carry out additional regulated activity to those notified to the Authority under section 99C if –

(a) the following documents have been lodged by his principal with the Authority in such form and manner as the Authority may prescribe:

(i) a notice of intent by the principal

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(ii) a certification by the principal that the individual is a fit and proper person to be an appointed representative in respect of that additional regulated activity;

(b) his name has been listed on the Authority's public register of representatives in respect of that additional regulated activity; and

(c) he carries on business only in the regulated activities that -

(i) his principal is licensed to carry on; or

(ii) are carried out by his principal in his capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d).

(2) The Authority may require the principal or individual to furnish it with such information or documents as the Authority considers necessary in relation to the intended appointment of an individual as an appointed representative in relation to the additional regulated activity and the principal or the individual, as the case may be, shall comply with such a request.

(3) A notification under subsection (1) shall be accompanied by a non-refundable prescribed notification fee which shall be paid in the manner specified by the Authority.

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Power of Authority to refuse to enter, revoke or suspend

99G — (1) Subject to regulations made under this Act, the Authority may refuse to enter or revoke, an individual from the Authority's public register of representatives if —

(a) he fails or ceases to act as an appointed representative or a temporary representative, as the case may be, in respect of all the regulated activities for which his notification relates;

(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

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

(g) 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 the relevant regulated activity;

(h) he or his principal fails to satisfy the Authority that he is a fit and proper person;

(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) the Authority is not satisfied as to his record of past performance or expertise having regard to the nature of the duties which he may perform in relation to the carrying on of business in the relevant regulated activity;

(l) 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 business;

(m) the individual is in arrears in the payment of such

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contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);

(n) the Authority has reason to believe that he will not perform the relevant regulated activity efficiently, honestly or fairly;

(o) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name or keep his name in the public register of representatives as an appointed representative or a temporary representative, as the case may be;

(p) 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;

(q) 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;

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

(s) the licence of his principal is revoked.

(2) The Authority may, if it considers it desirable to do so -

(a) suspend an appointed representative or a temporary representative, as the case may be, from carrying on business in any regulated authority for a specific period instead of revoking the notification under subsection (1); and

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

(3) The Authority shall not refuse to enter, revoke or suspend an individual under subsection (1)(p) if –

(a) in the case where the individual furnished false or misleading information or document to the Authority, the individual proves that he had -

(i) made all inquiries (if any) that were reasonable in the circumstances; and

(ii) after doing so, believed on reasonable grounds that the information or document was not false or misleading;

(b) in the case where the principal furnished false or misleading information or document to the Authority and -

(i) such information or document was furnished to the principal by the individual, the individual proves that he had -

(A) made all inquiries (if any) that were reasonable in the circumstances; and

(B) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or

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(ii) such information or document was not furnished to the principal by the individual, the principal proves that he had -

(A) made all inquiries (if any) that were reasonable in the circumstances; and

(B) after doing so, believed on reasonable grounds that the information or document was not false or misleading.

(4) Subject to subsection (3), the Authority shall not refuse to enter, suspend or remove from notification, an individual in the Authority's public register of representatives, without giving him an opportunity to be heard.

(5) The Authority may refuse to enter, suspend or remove from notification, an individual from the Authority's public register of representatives, on any of the following grounds without giving him an opportunity to be heard:

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

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

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

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or dishonestly; and

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

(6) An individual who has been suspended from acting as an appointed representative or a temporary representative, as the case may be, to carry on business in any regulated activity shall cease to act as an appointed representative or a temporary representative, as the case may be, from the date on which the suspension takes effect until the expiration of the period of suspension.

(7) Any appointed representative or temporary representative, as the case may be, who performs a regulated activity while his notification has been suspended or removed 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.

(8) A suspension or removal from notification of an appointed representative or a temporary representative, as the case may be, shall not operate so as to –

(a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the suspension or removal, as the case may be; or

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

Power of Authority to impose conditions or restrictions

99H. — (1) The Authority may by notice in writing to an appointed representative or temporary representative, as the case may be, impose such conditions or restrictions as it thinks fit.

(2) Without prejudice to the generality of subsection (1), the Authority may, in entering the appointed representative's or temporary representative's name in the register, impose conditions or restrictions with respect to the type of regulated activity which the appointed representative or temporary representative, as the case may be, may or may not carry on business in,

(3) The Authority may, at any time, by notice in writing to the appointed representative or temporary representative, as the case may be, vary any condition or restriction or impose such further condition or restriction as it may think fit.

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

Existing Provision

Proposed Amendment

False statements in relation to notification of an appointed representative or a temporary representative

99I. (1) Any principal who, in connection with the provision of the notice of intent and certification to the Authority under section 99C or D for an individual to act as its appointed representative or a temporary representative, as the case may be, —

(a) makes a statement which is false or misleading in a material particular; or

(b) omits to state any matter or thing without which the notice or certification is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(2) Any individual who, in connection with his principal's notification or certification to the Authority for him to act as an appointed representative or a temporary representative, as the case may be, —

(a) makes a statement to the principal which is false or misleading in a material particular and such statement was thereafter provided to the Authority; or

(b) omits to state any matter or thing to the Principal without which his notification or certification as an appointed representative or a temporary representative, as the case may be, is misleading in a material respect,

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shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(3) Any individual who, in connection with his principal's notification or certification to the Authority for him to act as an appointed representative or a temporary representative, as the case may be, —

(a) makes a statement to the Authority which is false or misleading in a material particular; or

(b) omits to state any matter or thing to the Authority without which his notification or certification as an appointed representative or a temporary representative, as the case may be, is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(4) A person referred to in subsection (1), (2) or (3) shall not be guilty of an offence if he proves that he —

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement made or the omission to state the matter or thing, as the case may be, was not false or misleading.

Existing Provision

Proposed Amendment

Record of appointed representatives or temporary representatives

99J. (1) The Authority shall establish and maintain, in such form as it thinks fit, a record of information on appointed representatives and temporary representatives, as the case may be, comprising –

(a) each appointed representative's or temporary representative's name;

(b) the name of all his current and past principals;

(c) the current and past regulated activities performed by him and the date of commencement and cessation (if any) of such activities;

(d) where the business of the principal for which he acts is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on;

(e) formal regulatory actions taken by the Authority against him; and

(f) such other information as may be prescribed by the Authority.

(2) The Authority may publish the information referred to in subsection (1), or any part of it in a public register of representatives, set out at the Authority's Internet website at <http://www.mas.gov.sg>.

Existing Provision

Proposed Amendment

[SIA, s. 37; FTA, s. 19]

Appeals

99K. —(1) Any person who is aggrieved by —

(a) the refusal of the Authority to enter his name in the public register of representatives;

(b) the removal from notification by the Authority of an appointed representative or a temporary representative, as the case may be, from the public register of representatives; or

(c) the suspension of an appointed representative or a temporary representative, as the case may be, by the Authority;

may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

Power of Authority to make regulations

100. —~~(1) Without prejudice to section 341, the Authority may make regulations relating to the grant of a capital markets services licence or a representative's licence, and requirements applicable to a licensed person, exempt person, representative of an exempt person or class of such persons.~~

(1) Without prejudice to section 341, the Authority may make regulations relating to the grant of a capital markets services licence or notification of an appointed representative or temporary representative, as the case may be, and requirements applicable to a licensed person, exempt person, representative of an exempt person or class of such persons.

(2) Regulations made under this section may provide —

Existing Provision

(a) that a contravention of any specified provision thereof shall be an offence; and

(b) for penalties not exceeding a fine of \$100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[16/2003]

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 licensed person, exempt person, ~~representative of an exempt person~~, or class of such persons, to comply with such requirements as the Authority may specify in the written directions.

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

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

its

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

Existing Provision

(c) the qualifications, experience and training of representatives,
and the person to whom such direction is issued shall comply with the direction.

[16/2003]

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

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

[SIA, s. 21; E (DM) A, s. 14]



Proposed Amendment

Power of Authority to make prohibition orders

101A. — (1) The Authority may make a prohibition order against a person, by notice in writing, 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 which, if the person were a licensee, there would exist a ground on which the Authority may suspend or revoke its licence under section 95;

(c) the Authority suspends or revokes an individual in the Authority's public register of representatives;

(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 the court under section 232 or has entered into an agreement with the Authority to pay a civil penalty under section 232(5);

Existing Provision

Proposed Amendment

(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 as an officer of a holder of a capital markets services licence under section 97(1)(h).

(2) A prohibition order made under subsection (1) may —

(a) prohibit the person from —

(i) performing any regulated activity, or performing such regulated activity in specified circumstances or capacities; or

(ii) taking part, directly or indirectly in the management of, acting as a director of, or becoming a substantial shareholder of, a holder of a capital markets services licence, or a person exempt from the requirement to hold a capital markets services licence under sections 99(1)(a), (b), (c), (d), (f) or (g) or paragraph 4(1)(c), 5(1)(d) or 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10);

whether permanently or for a specified period;

(b) include a provision allowing the person, subject to any

Existing Provision

Proposed Amendment

condition specified in the order —

(i) to do specified acts; or

(ii) to do specified acts in specified circumstances, or

that the order would otherwise prohibit him from doing.

(3) The Authority shall not make a prohibition order against a person without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to make a prohibition order against him may, within 30 days of the decision, appeal in writing to the Minister.

Effect of prohibition orders

101B. — (1) A person against whom a prohibition order is made shall comply with the prohibition order.

(2) No holder of a capital markets services licence or person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c), (d), (f) or (g) or paragraph 4(1)(c), 5(1)(d) or 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) shall employ or otherwise deal with any person against whom a prohibition order has been made under section 101A to the extent that such employment or dealing is prohibited by the order.

(3) Any person who contravenes subsection (1) shall be guilty of an

Existing Provision

Proposed Amendment

offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Any holder of a capital markets services licence or person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c), (d), (f) or (g) or paragraph 4(1)(c), 5(1)(d) or 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) which contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

Variation or revocation of prohibition orders

101C. — (1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

(2) The Authority may vary or revoke a prohibition order under subsection (1) —

(a) on its own initiative; or

(b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such document or fee as may be prescribed.

(3) The Authority shall not vary a prohibition order made against a

Existing Provision

Proposed Amendment

person under subsection (2) (a) without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against him under subsection (2) (a) may, within 30 days of the decision, appeal in writing to the Minister.

Date of effect of prohibition orders

101D. — (1) A prohibition order, or any variation or revocation of a prohibition order, shall take effect on a date as specified in the order by the Authority.

(2) The issue of a prohibition order shall not operate so as to —

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

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

[SIA, s. 38; FTA, s. 20 and s. 22]

Existing Provision

PART VI

CONDUCT OF BUSINESS

Division 1—General

~~Certain representations prohibited~~

~~**117.**—(1) The holder of a capital markets services licence shall not represent or imply or knowingly permit to be represented or implied in any manner to any person that the holder's abilities or qualifications have in any respect been approved by the Authority.~~

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

~~{SIA, s. 48}~~

~~Issue of contract notes~~

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

Proposed Amendment

[Note: Sections 117 to 122, and sections 125 to 129 will be migrated to the Securities and Futures (Licensing and Conduct of Business) Regulations.]

Existing Provision

Proposed Amendment

~~(a) give to the other party to the transaction a contract note which contains such information as may be prescribed; or~~

~~(b) procure that such a contract note be given in its name.~~

~~{SIA, s. 49}~~

119. ~~(Repealed by Act 1/2005)~~

~~Disclosure of certain interests in respect of underwriting agreement~~

120. ~~(1) Where—~~

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

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

Existing Provision

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

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

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

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

~~{1/2005}~~

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

~~{1/2005}~~

Proposed Amendment

Existing Provision

~~(3) Where the holder of a capital markets services licence sends to any person a written offer, written recommendation or written statement to which subsection (1) applies, the holder shall retain a copy of the written offer, recommendation or statement for a period of 5 years after the day the written offer, recommendation or statement is made.~~

~~{1/2005}~~

~~(4) The Authority may, if it is in the public interest, exempt any person or class of persons, or any securities or class of securities, from the application of this section.~~

~~{1/2005}~~

~~(5) The holder of a capital markets services licence which contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.~~

~~{1/2005}~~

~~{SIA, s. 50}~~

121. *(Repealed by Act 1/2005)*

Proposed Amendment

Existing Provision

Priority to customers' orders

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

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

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

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

{1/2005}

Proposed Amendment

Existing Provision

~~(2) Subsection (1) shall not apply to the holder of a capital markets services licence or a representative of such a holder —~~

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

~~(b) when carrying out the act referred to in subsection (1) under such other circumstances as may be prescribed by the Authority.~~

~~{1/2005}~~

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

~~{SIA, s. 54; FTA, s. 37A}~~

Proposed Amendment

Existing Provision

Penalties under this Division

~~124. Any person who, without reasonable excuse, contravenes any of the provisions of this Division, shall be guilty of an offence and shall be liable on conviction, where no penalty is expressly provided, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.~~

~~{1/2005}~~

Division 2—Securities

Dealings as principal

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

~~{16/2003}~~

Proposed Amendment

Existing Provision

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

~~{16/2003}~~

~~(3) (Deleted by Act 16/2003)~~

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

~~{1/2005}~~

~~(5) Where the holder of a capital markets services licence to deal in securities fails to comply with subsection (1) or (2) in respect of a contract for the sale of securities by the holder, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission given in writing to the holder not~~

Proposed Amendment

Existing Provision

later than 30 days after the receipt of the contract note.

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

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

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

~~(9) For the purposes of this section —~~

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

~~(i) a person associated with or connected to the holder;~~

Proposed Amendment

Existing Provision

~~(ii) a corporation in which the holder has a controlling interest; or~~

~~(iii) a corporation in which the holder's interest and the interests of the directors of the holder together constitute a controlling interest; and~~

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

~~(i) a securities exchange;~~

~~(ii) an overseas securities exchange; or~~

~~(iii) a recognised market operator.~~

~~{16/2003;1/2005}~~

~~{SIA, s. 52}~~

***Division 3 — Futures Contracts and Leveraged Foreign
Exchange Trading***

Proposed Amendment

Existing Provision

Proposed Amendment

~~Trading against customer~~

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

~~(a) the holder's own account;~~

~~(b) an account of a person associated with or connected to it;
or~~

~~(c) an account in which the holder has an interest,~~

~~except with the customer's prior consent and in accordance with the business rules and practices of a futures exchange or recognised market operator.~~

~~{1/2005}~~

~~{FTA, s. 37B}~~

Existing Provision

Proposed Amendment

~~Cross-trading~~

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

~~(a) on the trading floor or electronic futures trading system;
or~~

~~(b) in accordance with the business rules and practices of a futures exchange or recognised market operator.~~

~~{1/2005}~~

~~{FTA, s. 37C}~~

~~Risk disclosure by certain persons~~

~~128.—(1) The holder of a capital markets services licence to trade in futures contracts or carry out leveraged foreign exchange trading shall not open a futures trading account or leveraged foreign exchange trading account for a customer unless he—~~

Existing Provision

~~(a) furnishes the customer with a separate written risk disclosure document which shall be in such form and contain such information as the Authority may prescribe; and~~

~~(b) receives from the customer an acknowledgment signed and dated by the customer that he has received and understood the nature and contents of the risk disclosure document.~~

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

~~(a) managing the customer's futures trading account or foreign exchange trading account; or~~

~~(b) guiding the customer's futures trading account or foreign exchange trading account;~~

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

Proposed Amendment

Existing Provision

~~(i) delivers or causes to be delivered to the prospective customer a risk disclosure document in respect of that purpose which shall be in such form and contain such information as the Authority may prescribe; and~~

~~(ii) receives from the prospective customer an acknowledgment signed and dated by him that he has received and understood the nature and contents of the risk disclosure document.~~

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

~~{FTA, s. 39}~~

Penalties under this Division

~~**129.** Any person who contravenes any provision of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.~~

~~{FTA, s. 40}~~

Proposed Amendment

Existing Provision

Proposed Amendment

PART VII

DISCLOSURE OF INTERESTS

~~Division 1—Registers of Interests in Securities~~

~~Application of this Division~~

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

(2) In this Division—

(a) “relevant person” means—

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

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

Existing Provision

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

~~(b) a reference to securities is a reference to securities which are listed for quotation, or quoted, on a securities exchange or recognised market operator.~~

~~{1/2005}~~

~~{SIA, s. 41}~~

Register of securities

~~131. (1) A relevant person shall —~~

~~(a) maintain in the prescribed form a register of his interests in securities;~~

~~(b) enter in the register, within 7 days after the date that he acquires any interest in securities, particulars of the securities in which he has an interest and particulars of his interest in~~

Proposed Amendment

Existing Provision

those securities; and

~~(c) retain that entry in an easily accessible form for a period of not less than 5 years after the date on which such entry is first made.~~

~~(2) Where there is a change (not being a prescribed change) in any interest in securities of a relevant person, he shall—~~

~~(a) enter in the register, within 7 days after the date of the change, particulars of the change including the date of the change and the circumstances by reason of which the change has occurred; and~~

~~(b) retain that entry in an easily accessible form for a period of not less than 5 years after the date on which such entry was first made.~~

~~{16/2003}~~

~~{SIA, s. 42}~~

Proposed Amendment

Existing Provision

Proposed Amendment

~~Notice of particulars to Authority~~

~~132.~~—(1) A relevant person shall give notice to the Authority in the prescribed form of —

~~(a) the place at which he will keep the register of his interests in securities or, if the register is in electronic form, the place at which full access to the register may be gained; and~~

~~(b) such other particulars as may be prescribed.~~

~~(2) The notice under subsection (1) shall be given by the relevant person as part of his application for a licence under this Act.~~

~~(3) A person who ceases to be a relevant person shall, within 14 days of his so ceasing, notify the Authority.~~

~~(4) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.~~

~~{SIA, s. 43}~~

Existing Provision

Proposed Amendment

Place at which register is kept

133.—(1) A relevant person shall keep the register of his interests in securities —

(a) in the case of an individual, at his principal place of business; or

(b) in the case of a corporation, at any of its places of business.

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

{SIA, s. 43A}

Defence to prosecution

134.—(1) Where a person is charged with an offence in respect of a contravention of section 131 or 132, it shall be a defence for the person to prove —

Existing Provision

~~(a) that his contravention was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence; and~~

~~(b) that —~~

~~(i) he was not so aware on the date of the summons;
or~~

~~(ii) he became so aware before the date of the summons and complied with the relevant section within 14 days after becoming so aware.~~

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

~~[SIA, s. 44]~~

Proposed Amendment

Existing Provision

Proposed Amendment

Production of register

~~135.—(1) The Authority may require any relevant person to produce for its inspection the register of his interests in securities, and the Authority may make a copy of, or take extracts from, the register.~~

~~(2) Any relevant person who—~~

~~(a) fails to produce the register of his interests in securities for inspection by the Authority; or~~

~~(b) fails to allow the Authority to make a copy of, or take extracts~~

~~from, the register,~~

~~shall be guilty of an offence.~~

~~{SIA, s. 45}~~

Existing Provision

Extract of register

~~136.~~ The Authority may supply a copy of an extract of a register obtained under section 135 to any person who, in the opinion of the Authority, should in the public interest be informed of the dealing in securities disclosed in the register.

~~{SIA, s. 47}~~



Division 2 — Disclosure by Substantial Shareholders

~~Duty of substantial shareholders to notify securities exchange~~

~~137.—(1) In the case of a company all or any of which shares are listed for quotation on a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) (other than sections 86, 87, 88, 89 and 92) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial shareholder as though references to the company to which notification should be given were references to the securities exchange, and such person shall comply with those provisions accordingly.~~

~~{1/2005}~~

~~(2) Any person who fails to comply with subsection (1) shall be~~

Proposed Amendment

Division 2 – Disclosure of Interest in Corporation

Application of this Division

137.—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) A reference to a corporation is a reference to —

(a) a company all or any of the shares in which are listed for quotation on the official list of a securities exchange;

(b) a corporation (not being a collective investment scheme) all or any of the shares in which are listed for quotation on the official list of a securities exchange and such listing is a primary listing; or

(c) an entity that is for the time being declared by the Authority, by order published in the Gazette, to be a corporation for the purposes of this Division.

(3) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such

Existing Provision

~~guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.~~



Division 3 — Disclosure by Substantial Unitholders

~~Duty of substantial unitholders to notify securities exchange~~

~~**137A.**— (1) In the case of a collective investment scheme that invests only in real estate and real estate related assets specified by the Authority in the Code on Collective Investment Schemes all or any of which units are listed for quotation on a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) (other than sections 79, 81, 86, 87, 88, 89 and 92) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder as though —~~

~~(a) references to the company to which notification should be given were references to the securities exchange;~~

~~(b) references to shares in the company were references to units in the scheme;~~

~~(c) references to substantial shareholding were references to~~

Proposed Amendment

stock shall be deemed to be an interest in an issued share in the corporation having attached to it the same rights as are attached to that stock.

(4) For the avoidance of doubt, a reference in the definition of “substantial shareholder” in section 2(1) to shares includes a reference to equity interests of an entity referred to in subsection (2)(c).

(5) For the purposes of determining whether a person has an interest in securities under this Division, subsection (6) of section 4 shall not apply and for the purposes of the application of subsection (5) of section 4, a person is an associate of another person if the first-mentioned person is —

(a) a subsidiary of the second-mentioned person;

(b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or

(c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security.

Existing Provision

substantial unitholding; and

~~(d) references to a substantial shareholder were references to a substantial unitholder,~~

~~and such person shall comply with those provisions accordingly.~~

~~(2) 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 \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.~~



~~{1/2005}~~

Duty of substantial unitholders to notify trustee of collective investment scheme

137B.—(1) ~~In the case of a collective investment scheme that invests only in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes all or any of which units are listed for quotation on a securities exchange, Division 4 of Part IV of the Companies Act (other than sections 79 and 81) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder as though—~~

~~(a) references to the company to which notification should be~~

Proposed Amendment

(6) For the purposes of this Division, a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time.

Persons obliged to comply with Division and power of Authority to grant exemption or extension

137A.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed or constituted and whether carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or any class of persons from all or any of the provisions of this Division, subject to such conditions or restrictions as may be imposed by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a

Existing Provision

~~given were references to the trustee of the scheme;~~

~~(b) references to shares in the company were references to units in the scheme;~~

~~(c) references to substantial shareholding were references to substantial unitholding;~~

~~(d) references to a substantial shareholder were references to a substantial unitholder; and~~

~~(e) references to the Registrar were references to the Authority, and such person shall comply with those provisions accordingly.~~

~~{1/2005}~~

~~(2) If a person to whom subsection (1) applies fails to comply with any of the provisions of Division 4 of Part IV of the Companies Act (other than sections 79 and 81), he shall be guilty of an offence and shall be liable on conviction to the same penalties as are prescribed under that Act for a failure to comply with such provision.~~

~~{1/2005}~~

Proposed Amendment

continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Where a person is required to give a notice under this Division, the Authority may, on the application of such person, in its discretion, extend the time for giving the notice or allow such further extension of time.

Duty of director and chief executive officer to notify corporation of his interests

137B.—(1) A director or chief executive officer of a corporation shall give notice in writing to the corporation of particulars of —

(a) shares in that corporation, being shares held by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest;

(b) debentures of the corporation which are held by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest;

(c) rights or options of the director or chief executive officer, as

Existing Provision

Proposed Amendment

the case may be, or of the director or chief executive officer, as the case may be, and another person or other persons, in respect of the acquisition or disposal of shares in the corporation;

(d) contracts to which the director or chief executive officer, as the case may be, is a party, or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the corporation; and

(e) any other securities which are held, whether directly or indirectly, by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest, as the Authority may prescribe for the purposes of the disclosure under this section.

(2) The notice referred to in subsection (1) shall be given within 2 business days after —

(a) the date on which the director or chief executive officer, became a director or chief executive officer, as the case may be; or

(b) the date on which the director or chief executive officer became a registered holder of, or acquired an interest in, the shares, debentures, units in collective investment schemes, rights, options or contracts, or other securities,

Existing Provision

Proposed Amendment

whichever last occurs.

(3) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(4) In this section —

(a) “real estate investment trust” means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any of which units are listed for quotation on a securities exchange; and

(b) a reference to a person who holds or acquires shares, debentures or units in collective investment schemes, or an interest in shares, debentures or units in collective investment schemes, includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or unit in a collective investment scheme, or an interest in a share, debenture or unit in a collective investment scheme.

(5) For the purposes of this section, an interest of a member of a director’s or chief executive officer’s family shall be treated as an interest of the director or chief executive officer of the corporation and

Existing Provision

Proposed Amendment

the words “member of a director’s or chief executive officer’s family” shall include his –

(a) spouse; and

(b) son, adopted son, step-son, daughter, adopted daughter and step-daughter, who is below the age of 18 years.

Duty of director or chief executive officer to notify corporation of change in interests

137C.—(1) Where there is a change in the particulars referred to in section 137B(1) of which notice has or should have been given to the corporation, the director or chief executive officer, as the case may be, shall give notice in writing to the corporation within 2 business days after he becomes aware of such change.

(2) The first-mentioned notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) The provisions of section 137B(4) and (5) shall apply to this section with such modifications and qualifications as may be necessary.

Existing Provision

Proposed Amendment

Penalties under this Subdivision

137D.—(1) Subject to subsections (2) and (3), any director or chief executive officer of a corporation who —

(a) contravenes section 137B(1), (2) or (3) or 137C(1) or (2); or

(b) in purported compliance with section 137B(3) or 137C(2), makes to the corporation a statement which 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 \$25,000.

(2)Where —

(a) any contravention by a director or chief executive officer of a corporation of section 137B(1), (2) or (3) or 137C(1) or (2) is committed intentionally or recklessly; or

(b) in purported compliance with section 137B(3) or 137C(2), a director or chief executive officer of a corporation intentionally

Existing Provision

Proposed Amendment

or recklessly makes to the corporation a statement which is false or misleading in a material particular,

such director or chief executive officer 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 2 years or to both.

(3) No proceedings under this section shall be instituted against a director or chief executive officer for an offence in respect of a contravention of section 137B or 137C after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

Subdivision (2) — Disclosure by Substantial Shareholders

Duty of substantial shareholder to notify corporation of his interests

137E.—(1) A person who is a substantial shareholder in a corporation shall give notice in writing to the corporation of particulars of the voting shares in the corporation in which he has an interest or interests or any other securities in which he has an interest and the nature and extent of that interest as the Authority may prescribe for the purposes of disclosure under this section.

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Proposed Amendment

(2) The notice referred to in subsection (1) shall be given within 2 business days after the person becomes aware that he is a substantial shareholder.

(3) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(4) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).

Duty of substantial shareholder to notify corporation of change in interests

137F.—(1) Where there is a change in the percentage level of —

(a) the interest or interests of a substantial shareholder in a corporation in voting shares in the corporation; or

(b) any other securities in which a substantial shareholder has an interest as the Authority may prescribe for the purposes of the disclosure under section 137E.

Existing Provision

Proposed Amendment

the substantial shareholder shall give notice in writing to the corporation within 2 business days after he becomes aware of such a change.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) In subsection (1), “percentage level”, in relation to a substantial shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes attached to —

(a) all the voting shares (excluding treasury shares) in the corporation; or

(b) where the share capital of the corporation is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

Existing Provision

Proposed Amendment

Duty of person who ceases to be substantial shareholder to notify corporation

137G.—(1) A person who ceases to be a substantial shareholder in a corporation shall give notice in writing to the corporation within 2 business days of the date on which he becomes aware that he has ceased to be a substantial shareholder.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

Beneficial owner to ensure notification by person who holds, acquires or disposes securities on his behalf

137H.—Where a person authorises another person to hold, acquire or dispose of, on his behalf, securities or interests in securities of a corporation, he shall ensure that the second-mentioned person notifies him immediately of such acquisitions or disposals of securities or interest in securities effected by the second-mentioned person which will or may give rise to any duty to give notice under this Subdivision.

Existing Provision

Proposed Amendment

Notification by person who holds, acquires or disposes of shares for benefit of another person

137I.—Where a person holds securities in a corporation, being securities in which another person has an interest, he shall give to the second-mentioned person a notice, in such form as the Authority may prescribe, as soon as possible and in any case, no later than 2 business days after becoming the holder of the securities or after acquiring or disposing the securities

Corporation to keep register of substantial shareholders

137J.—(1) A corporation shall keep a register in which it shall immediately enter —

(a) the names of persons from whom it has received a notice under section 137E; and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 137F or 137G, the information given in that notice.

(2) A corporation shall keep the register referred to in subsection (1) at its registered office or, if the corporation does not have a registered office, at its principal place of business in Singapore and shall be open

Existing Provision

Proposed Amendment

for inspection by a member of the corporation without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the corporation requires.

(3) A person may request the corporation to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the corporation requires for every page or part thereof required to be copied and the corporation shall send the copy to that person, within 14 days after the day on which the request is received by the corporation.

(4) The Authority may at any time in writing require the corporation to furnish it with a copy of the register or any part of the register and the corporation shall furnish the copy within 7 days after the day on which the requirement is received by the corporation.

(5) Any corporation which fails to comply with subsection (1), (2), (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 of \$5,000 for every day during which the offence continues after conviction.

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Proposed Amendment

Penalties under this Subdivision

137K.—(1) Subject to subsections (2) and (3), a person who —

(a) contravenes section 137E(1), (2) or (3), 137F(1) or (2), 137G(1) or (2), 137H or 137I; or

(b) in purported compliance with 137E(3), 137F(2), 137G(2) or 137I, makes a statement which 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 \$25,000.

(2) Where —

(a) any contravention by a person of section 137E(1), (2) or (3), 137F(1) or (2), 137G(1) or (2), 137H or 137I is committed intentionally or recklessly; or

(b) in purported compliance with 137E(3), 137F(2), 137G(2) or 137I, a person intentionally or recklessly makes a statement which is false or misleading in a material particular,

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Proposed Amendment

such person 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 2 years or to both.

(3) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of section 137E, 137F, 137G, 137H or 137I after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

Powers of Court with respect to non-compliance by substantial shareholders

137L.—(1) Where a person is a substantial shareholder, or at any time after [date of operation] has been a substantial shareholder in a corporation and has failed to comply with section 137E, 137F or 137G, the Court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

(a) an order restraining the substantial shareholder from disposing of any interest in shares in the corporation in which he is or has been a substantial shareholder;

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Proposed Amendment

(b) an order restraining a person who is, or is entitled to be the holder of the shares referred to in paragraph (a) from disposing of any interest in those shares;

(c) an order restraining the exercise of any voting or other rights attached to any share in the corporation in which the substantial shareholder has or has had an interest;

(d) an order directing the corporation not to make payment, or to defer making payment, of any sum due from the corporation in respect of any share in which the substantial shareholder has or has had an interest;

(e) an order directing the sale of all or any of the shares in the corporation in which the substantial shareholder has or has had an interest;

(f) an order directing the corporation not to register the transfer or transmission of specified shares;

(g) an order that any exercise of the voting or other rights attached to specified shares in the corporation in which the substantial shareholder has or has had an interest be disregarded;

Existing Provision

Proposed Amendment

(h) for the purposes of securing compliance with any other corporation or any other person to do or refrain from doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the corporation.

(4) The Court may direct that, where a share is not sold in accordance with an order of the Court under this section, the Authority may make a further application to the Court for such further direction as the Court may think fit to order.

(5) The Court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

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(a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

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Power of corporation to require disclosure of beneficial interest in its voting shares

137M.—(1) Any corporation may by notice in writing require any member of the corporation within such reasonable time as is specified in the notice —

(a) to inform it whether he holds any voting shares in the corporation as beneficial owner or as trustee ; and

(b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(2) Where a corporation is informed in pursuance of a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting shares in a corporation, the corporation may by notice in writing require that other person within such reasonable time as is specified in the notice —

(a) to inform it whether he holds that interest as beneficial owner or as trustee; and

(b) if he holds it as trustee, to indicate so far as he can the

Existing Provision

Proposed Amendment

persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

(3) Any corporation to which this section applies may by notice in writing require any member of the corporation to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting shares in the corporation held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

(4) The notice referred to in subsection (1) or (3) shall include such information and matters as may be prescribed by the Authority, and the delivery of such notice shall comply with such other requirements as may be prescribed by the Authority.

(5) Whenever a corporation receives information from a person in pursuance of a requirement imposed on him under this section with respect to shares held by a member of the corporation, it shall be under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 137J –

(a) the fact that the requirement was imposed and the date on which it was imposed; and

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Proposed Amendment

(b) the information received in pursuance of the requirement.

(6) Section 137J shall apply in relation to the part of the register referred to in subsection (5) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (5).

(7) Subject to subsections (8), (9) and (10), any person who —

(a) fails to comply with a notice under this section; or

(b) in purported compliance with such a notice, makes any statement which 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 \$25,000.

(8) Where —

(a) any failure by a person to comply with a notice under this section is committed intentionally or recklessly; or

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(b) in purported compliance with such a notice, a person intentionally or recklessly makes any statement which is false or misleading in a material particular,

such person 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 2 years or to both.

(9) No proceedings under this section shall be instituted against a person for an offence under this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that offence.

(10) A person shall not be guilty of an offence under this section if he proves that the information in question was already in the possession of the corporation or that the requirement to give it was for any other reason frivolous or vexatious.

(11) For the purposes of this section, “member” means –

(a) in relation to a company, a person referred to as a member in section 19(6) of the Companies Act (Cap. 50); and

(b) in relation to a corporation (other than a company), such equivalent person.

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Subdivision (3) — Disclosure by Corporation

Duty of corporation to make disclosure

137N.—(1) Where a corporation all or any of the shares in which are listed for quotation on the official list of a securities exchange has been notified in writing by a director, chief executive officer or substantial shareholder in pursuance of a requirement imposed on him under section 137B, 137C, 137E, 137F or 137G, as the case may be, the corporation shall announce or otherwise disseminate the information stated in the notification to the securities market operated by the securities exchange as soon as possible and in any case, no later than the end of the following business day, upon receipt of the notification from the director, chief executive officer or substantial shareholder, as the case may be.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) Subject to subsection (4) and (5), any corporation —

(a) that contravenes subsection (1) or (2); or

(b) in purported compliance with subsection (2) makes a

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statement which is false or misleading in a material particular,

the corporation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(4) Where any contravention by a corporation of this section is committed intentionally or recklessly, or a statement made by a corporation is false or misleading in a material particular and such statement is made intentionally or recklessly, the corporation and every director who intentionally or recklessly contravenes or permits or authorises the contravention of this section or permits the making of the false or misleading statement, as the case may be, shall be guilty of an offence and —

(a) in the case of the corporation, shall be liable on conviction to a fine not exceeding \$250,000; and

(b) in the case of the director, shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of this section after a court has made an order against him for the payment of a civil penalty under section 137M in respect of that contravention.

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Proposed Amendment

*Division 3 –Disclosure of Interest in Business Trust and interests
in shares of Trustee-Manager*

Application of this Division

**137O.—(1) This section shall have effect for the purposes of this
Division but shall not prejudice the operation of any other provision
of this Act.**

(2) A reference to a registered business trust is a reference to a
registered business trust all or any of which units are listed for
quotation on the official list of a securities exchange.

(3) A reference to a recognised business trust is a reference to a
recognised business trust all or any of which units are listed for
quotation on the official list of a securities exchange and such listing
is a primary listing.

(4) For the purposes of determining whether a person has an interest in
securities under this Division, subsection (6) of section 4 shall not
apply and for the purposes of the application of subsection (5) of
section 4, a person is an associate of another person if the first-

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mentioned person is —

(a) a subsidiary of the second-mentioned person;

(b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or

(c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security.

(5) For the purposes of this Division, a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time.

Persons obliged to comply with Division and power of Authority to grant exemption or extension

137P.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether

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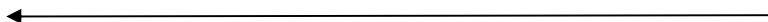
citizens of Singapore or not, and to all entities, whether formed or constituted and whether carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or any class of persons from all or any of the provisions of this Division, subject to such conditions or restrictions as may be imposed by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Where a person is required to give a notice under this Division, the Authority may, on the application of such person, in its discretion, extend the time for giving the notice or allow such further extension of time.



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Subdivision (1) — Disclosure by Substantial Unitholders

Duty of substantial unitholders to notify trustee-manager of registered business trust or recognised business trust

137Q.—(1) In the case of a registered business trust or recognised business trust, Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder as though —

(a) references to the corporation to which notification should be given were references to the trustee-manager of the registered business trust or recognised business trust, as the case may be;

(b) references to shares of the corporation were references to units in the registered business trust or recognised business trust, as the case may be; and

(c) references to a substantial shareholder were references to a substantial unitholder of the registered business trust or recognised business trust, as the case may be,

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and such person shall comply with those provisions accordingly.

(2) Subject to subsections (3) and (4), any person to whom subsection (1) applies who –

(a) fails to comply with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M);
or

(b) in purported compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M), makes a statement which 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 \$25,000.

(3) Where –

(a) any non-compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) by a person to whom subsection (1) applies is committed intentionally or recklessly; or

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(b) in purported compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137L and 137M), a person intentionally or recklessly makes a statement which is false or misleading in a material particular,

such person 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 2 years or to both.

(4) No proceedings under this section shall be instituted against a person to whom subsection (1) applies for an offence in respect of a non-compliance of any provision of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that non-compliance.

Trustee-manager to keep register of substantial unitholders

137R.—(1) The trustee-manager of a registered business trust or recognised business trust to whom section 137Q(1) applies shall keep a register in which it shall immediately enter —

(a) the names of persons from whom it has received a notice

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under section 137E (with such modifications and qualifications as provided for under section 137Q); and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 137F or 137G (with such modifications and qualifications as provided for under section 137Q), the information given in that notice.

(2) The trustee-manager of a registered business trust or recognised business trust shall keep the register referred to in subsection (1) at its registered office, or, if the trustee-manager does not have a registered office, at its principal place of business in Singapore and shall be open for inspection by a unitholder of the registered business trust or recognised business trust without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the trustee-manager requires.

(3) A person may request the trustee-manager of a registered business trust or recognised business trust to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the trustee-manager requires for every page or part thereof required to trustee-manager be copied and the trustee-manager shall send the copy to that person, within 14 days after the day on which the request is received by the trustee-manager.

(4) The Authority may at any time in writing require the trustee-manager of a registered business trust or recognised business trust to

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furnish it with a copy of the register or any part of the register and the trustee-manager shall furnish the copy within 7 days after the day on which the requirement is received by the trustee-manager.

(5) The trustee-manager of a registered business trust or recognised business trust which fails to comply with subsection (1), (2), (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 of \$5,000 for every day during which the offence continues after conviction.

Powers of Court with respect to non-compliance by substantial unitholders

137S.—(1) Where a person is a substantial unitholder, or at any time after [date of operation] has been a substantial unitholder in a registered business trust or recognized business trust to whom section 137Q(1) applies and has contravened section 137E, 137F or 137G (with such modifications and qualifications as provided for under section 137Q), the Court may, on the application of the Authority, whether or not that contravention still continues, make one or more of the following orders:

(a) an order restraining the substantial unitholder from disposing of any interest in units in the registered business trust or recognized business trust in which he is or has been a

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substantial unitholder;

(b) an order restraining a person who is, or is entitled to be the holder of the units referred to in paragraph (a) from disposing of any interest in those units;

(c) an order restraining the exercise of any voting or other rights attached to any unit in the registered business trust or recognized business trust in which the substantial unitholder has or has had an interest;

(d) an order directing the trustee-manager of the registered business trust or recognized business trust not to make payment, or to defer making payment, of any sum due from the registered business trust or recognised business trust, as the case may be, in respect of any unit in which the substantial unitholder has or has had an interest;

(e) an order directing the sale of all or any of the units in the registered business trust or recognized business trust in which the substantial unitholder has or has had an interest;

(f) an order directing the trustee-manager of the registered business trust or recognized business trust not to register the transfer or transmission of specified units;

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(g) an order that any exercise of the voting or other rights attached to specified units in the registered business trust or recognized business trust in which the substantial unitholder has or has had an interest be disregarded;

(h) for the purposes of securing compliance with any other order made under this section, an order directing the trustee-manager of the registered business trust or recognized business trust or any other person to do or refrain from doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a unit may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial unitholder in the registered business trust or recognized business trust, as the case may be.

(4) The Court may direct that, where a unit is not sold in accordance with an order of the Court under this section, the Authority may make a further application to the Court for such further direction as the Court may think fit to order.

(5) The Court shall, before making an order under this section and in

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determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the substantial unitholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a

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continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

Power of trustee-manager to require disclosure of beneficial interest in voting units

137T.—(1) The trustee-manager of a registered business trust or recognised business trust may by notice in writing require any unitholder of the registered business trust or recognised business trust, as the case may be, within such reasonable time as is specified in the notice –

(a) to inform it whether he holds any voting units in the registered business trust or recognised business trust, as the case may be, as beneficial owner or as trustee; and

(b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

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(2) Where the trustee-manager of a registered business trust or recognised business trust is informed in pursuance of a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in a registered business trust or recognised business trust, as the case may be, the trustee-manager may by notice in writing require that other person within such reasonable time as is specified in the notice –

(a) to inform it whether he holds that interest as beneficial owner or as trustee; and

(b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

(3) The trustee-manager of a registered business trust or recognised business trust to whom this section applies may by notice in writing require any unitholder of the registered business trust or recognised business trust, as the case may be, to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the registered business trust or recognised business trust, as the case may be, held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

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(4) The notice referred to in subsection (1) or (3) shall include such information and matters as may be prescribed by the Authority, and the delivery of such notice shall comply with such other requirements as may be prescribed by the Authority.

(5) Whenever the trustee-manager of a registered business trust or recognised business trust receives information from a person in pursuance of a requirement imposed on him under this section with respect to units held by a unitholder of the registered business trust or recognised business trust, as the case may be, it shall be under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137R –

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received in pursuance of the requirement.

(6) Section 137R shall apply in relation to the part of the register referred to in subsection (5) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (5).

(7) Subject to subsections (8), (9) and (10), any person who –

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(a) fails to comply with a notice under this section; or

(b) in purported compliance with such a notice, makes any statement which 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 \$25,000.

(8) Where –

(a) any failure by a person to comply with a notice under this section is committed intentionally or recklessly; or

(b) in purported compliance with such a notice, a person intentionally or recklessly makes any statement which is false or misleading in a material particular,

such person 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 2 years or to both.

(9) No proceedings under this section shall be instituted against a person for an offence under this section after a court has made an order against him for the payment of a civil penalty under section

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137ZM in respect of that offence.

(10) A person shall not be guilty of an offence under this section if he proves that the information in question was already in the possession of the trustee-manager or that the requirement to give it was for any other reason frivolous or vexatious.

*Subdivision (2) — Disclosure by Directors and Chief
Executive Officer of Trustee-Manager*

**Duty of director and chief executive officer of trustee-manager to
notify his interests**

137U.—(1) A director or chief executive officer of the trustee-
manager of a registered business trust or recognised business trust
shall give notice in writing to the trustee-manager of particulars of —

(a) units or derivatives of units in the registered business trust or
recognised business trust, being units or derivatives in which the
director or chief executive officer, as the case may be, has an
interest and the nature and extent of that interest; and

(b) debentures or units of debentures of the registered business

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trust or recognised business trust in which the director or chief executive officer, as the case may be, has an interest and the nature and extent of that interest; and

(c) any other securities which are held, whether directly or indirectly, by the director or chief executive officer, as the case may be, or in which he has an interest and the nature and extent of that interest, as the Authority may prescribe for the purposes of the disclosure under this section.

(2) The notice referred to in subsection (1) shall be given within 2 business days after —

(a) the date on which the director or chief executive officer became a director or chief executive officer, as the case may be, of the trustee-manager of a registered business trust or recognised business trust, as the case may be; or

(b) the date on which the director or chief executive officer became a unitholder of the registered business trust or recognised business trust, as the case may be, or acquired an interest in the units or derivatives of units in, debentures or units of debentures of, or other securities of, the registered business trust or recognised business trust, as the case may be,

whichever last occurs.

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(3) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(4) For the purposes of this section, an interest of a member of a director's or chief executive officer's family shall be treated as an interest of the director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust and the words "member of a director's or chief executive officer's family" shall include his –

(a) spouse; and

(b) son, adopted son, step-son, daughter, adopted daughter and step-daughter, who is below the age of 18 years.

Duty of director or chief executive officer of trustee-manager to notify trustee-manager of change in interests

137V.—(1) Where there is a change in the information and matters referred to in section 137U(1) of which notice has or should have been given to the trustee-manager of a registered business trust or recognised business trust, the director or chief executive officer of the

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trustee-manager shall give notice in writing to the trustee-manager within 2 business days after he becomes aware of such a change.

(2) The first-mentioned notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) The provision of section 137U(4) shall apply to this section with such modifications and qualifications as may be necessary.

Penalties under this Subdivision

137W.—(1) Subject to subsections (2) and (3), any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who –

(a) contravenes section 137U(1), (2) or (3) or 137V(1) or (2); or

(b) in purported compliance with section 137U(3) or 137V(2), makes to the trustee-manager a statement which is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine

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not exceeding \$25,000.

(2) Where –

(a) any contravention by a director or chief executive officer of the trustee-manager of a registered business trust or recognized business trust of section 137U(1), (2) or (3) or 137V(1) or (2) is committed intentionally or recklessly; or

(b) in purported compliance with section 137U(3) or 137V(2), a director or chief executive officer of the trustee-manager of a registered business trust or recognized business trust intentionally or recklessly makes to the trustee-manager a statement which is false or misleading in a material particular,

such director or chief executive officer 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 2 years or to both.

(3) No proceedings under this section shall be instituted against a director or chief executive officer for an offence in respect of a contravention of section 137U or 137V after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

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Subdivision (3) — Disclosure by Shareholders of Trustee-Manager

Duty of shareholder to notify trustee-manager of his interests or change in interests

137X.—(1) Where there is a change in the percentage level of the interest or interests of a shareholder of the trustee-manager of a registered business trust or recognised business trust in voting shares in the trustee-manager, and the interest or interests of the shareholder in voting shares in the trustee-manager following such a change reaches or crosses (either above or below) the percentage point of 15%, 30%, 50% or 75%, the shareholder shall give notice in writing to the trustee-manager within 2 business days after he becomes aware of his interests or the change in his interests.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) In subsection (1), “percentage level”, in relation to a shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes

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attached to —

(a) all the voting shares (excluding treasury shares) in the trustee-manager of a registered business trust or recognized business trust; or

(b) where the share capital of the trustee-manager of a registered business trust or recognized business trust is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

Penalties under this Subdivision

137Y.—(1) Subject to subsections (2) and (3), a person who —

(a) contravenes section 137X(1) or (2); or

(c) in purported compliance with 137X, makes to the trustee-manager of a registered business trust or recognised business trust a statement which is false or misleading in a

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material particular,

(d)

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(2) Where –

(a) any contravention by a person of section 137X(1) or (2) is committed intentionally or recklessly; or

(b) in purported compliance with 137X, a person intentionally or recklessly makes to the trustee-manager of a registered business trust or recognised business trust a statement which is false or misleading in a material particular,

such person 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 2 years or to both.

(3) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of section 137X after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

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Subdivision (4) — Disclosure by Trustee-Manager

Duty of trustee-manager of business trust to make disclosure

137Z.—(1) Where the trustee-manager of a registered business trust or recognised business trust –

(a) acquires, or disposes of, interests in units or derivatives of units in the registered business trust or recognised business trust; or

(b) has been notified in writing by a substantial unitholder or a director, chief executive officer or shareholder of the trustee-manager in pursuance of a requirement imposed on him under section 137X,

the trustee-manager shall announce or otherwise disseminate the information stated in the notification to the securities market operated by the securities exchange as soon as possible and in any case, no later than the end of the following business day, upon receipt of the notification from the substantial unitholder, director, chief executive officer or shareholder, as the case may be.

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(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority and complies with such prescribed form.

(3) Subject to subsections (4) and (5), the trustee-manager of a registered business trust or recognised business trust that contravenes subsection (1) or (2), or in purported compliance with subsection (2), makes a statement which is false or misleading in a material particular, the trustee-manager shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(4) Where any contravention by the trustee-manager of a registered business trust or recognised business trust of subsection (1) or (2) is committed intentionally or recklessly, or a statement made by the trustee-manager is false or misleading in a material particular and such statement is made intentionally or recklessly, the trustee-manager and every director of the trustee-manager who intentionally or recklessly contravenes or permits or authorizes the contravention of this section or permits the making of the false or misleading statement, as the case may be, shall be guilty of an offence and –

(a) in the case of the trustee-manager, shall be liable on conviction to a fine not exceeding \$250,000; and

(b) in the case of the director, shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not

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exceeding 2 years or to both.

(5) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

Division 4 — Disclosure of interests in Real Estate Investment Trust and interests in shares of Responsible Person

Application of this Division

137ZA.—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) For the purposes of this Division —

(a) “real estate investment trust” means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any of which units are listed for quotation on the official list of a securities

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exchange; and

(b) “trustee” in relation to a real estate investment scheme, means the trustee approved under section 289 for the scheme.

(3) For the purposes of determining whether a person has an interest in securities under this Division, subsection (6) of section 4 shall not apply and for the purposes of the application of subsection (5) of section 4, a person is an associate of another person if the first-mentioned person is —

(a) a subsidiary of the second-mentioned person;

(b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or

(c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security.

(4) For the purposes of this Division, a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular

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time of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time.

Persons obliged to comply with Division and power of Authority to grant exemption or extension

137ZB.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed or constituted and whether carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or any class of persons from all or any of the provisions of this Division, subject to such conditions or restrictions as may be imposed by the Authority.

(4) Any person who contravenes any condition or restriction imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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(5) Where a person is required to give a notice under this Division, the Authority may, on the application of such person, in its discretion, extend the time for giving the notice or allow such further extension of time.

Subdivision (1) — Disclosure by Substantial Unitholders

Duty of substantial unitholders to notify trustee and responsible person for real estate investment trust

137ZC.—(1) In the case of a real estate investment trust, Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder as though —

(a) references to the corporation to which notification should be given were references to —

(i) the trustee of the real estate investment trust; and

(ii) the responsible person for the real estate investment trust;

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(b) references to shares in the corporation were references to units in the real estate investment trust; and

(c) references to a substantial shareholder were references to a substantial unitholder of the real estate investment trust,

and such person shall comply with those provisions accordingly.

(2) Subject to subsections (3) and (4), any person to whom subsection (1) applies who –

(a) fails to comply with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M);
or

(b) in purported compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M), makes a statement which 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 \$25,000.

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(3) Where –

(a) any non-compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) by a person to whom subsection (1) applies is committed intentionally or recklessly; or

(b) in purported compliance with any of the provisions of Subdivision (2) of Division 2 (other than sections 137J, 137L and 137M), a person intentionally or recklessly makes a statement which is false or misleading in a material particular,

such person 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 2 years or to both.

(4) No proceedings under this section shall be instituted against a person to whom subsection (1) applies for an offence in respect of a non-compliance of any provision of Subdivision (2) of Division 2 (other than sections 137J, 137K, 137L and 137M) after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that non-compliance.

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Trustee for real estate investment trust to keep register of substantial unitholders

137ZD.—(1) The trustee for a real estate investment trust to whom section 137ZC(1) applies shall keep a register in which it shall immediately enter —

(a) the names of persons from whom it has received a notice under section 137E (with such modifications and qualifications as provided for under section 137ZC); and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 137F or 137G (with such modifications and qualifications as provided for under section 137ZC), the information given in that notice.

(2) The trustee for a real estate investment trust shall keep the register referred to in subsection (1) at its registered office, or, if the trustee does not have a registered office, at its principal place of business in Singapore and shall be open for inspection by a unitholder of the trust without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the trustee requires.

(3) A person may request the trustee for a real estate investment trust to furnish him with a copy of the register or any part of the register on

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payment in advance of a sum of \$1 or such lesser sum as the trustee requires for every page or part thereof required to trustee be copied and the trustee shall send the copy to that person, within 14 days after the day on which the request is received by the trustee.

(4) The Authority may at any time in writing require the trustee for a real estate investment trust to furnish it with a copy of the register or any part of the register and the trustee shall furnish the copy within 7 days after the day on which the requirement is received by the trustee.

(5) The trustee for a real estate investment trust which fails to comply with subsection (1), (2), (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 of \$5,000 for every day during which the offence continues after conviction.

Powers of Court with respect to non-compliance by substantial unitholders

137ZE.—(1) Where a person is a substantial unitholder, or at any time after [date of operation] has been a substantial unitholder in a real estate investment trust to whom section 137ZC(1) applies and has contravened section 137E, 137F or 137G (with such modifications and qualifications as provided for under section 137ZC), the Court may, on the application of the Authority, whether or not that contravention still continues, make one or more of the following orders:

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(a) an order restraining the substantial unitholder from disposing of any interest in units in the real estate investment trust in which he is or has been a substantial unitholder;

(b) an order restraining a person who is, or is entitled to be the holder of units referred to in paragraph (a) from disposing of any interest in those units;

(c) an order restraining the exercise of any voting or other rights attached to any unit in the real estate investment trust in which the substantial unitholder has or has had an interest;

(d) an order directing the trustee for the real estate investment trust not to make payment, or to defer making payment, of any sum due from the trust in respect of any unit in which the substantial unitholder has or has had an interest;

(e) an order directing the sale of all or any of the units in the real estate investment trust in which the substantial unitholder has or has had an interest;

(f) an order directing the trustee for the real estate investment trust not to register the transfer or transmission of specified units;

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(g) an order that any exercise of the voting or other rights attached to specified units in the real estate investment trust in which the substantial unitholder has or has had an interest be disregarded;

(h) for the purposes of securing compliance with any other order made under this section, an order directing the responsible person or the trustee for the real estate investment trust or any other person to do or refrain from doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a unit may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial unitholder in the real estate investment trust.

(4) The Court may direct that, where a unit is not sold in accordance with an order of the Court under this section, the Authority may make a further application to the Court for such further direction as the Court may think fit to order.

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(5) The Court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the substantial unitholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on

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conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

Power of trustee for real estate investment trust to require disclosure of beneficial interest in voting units

137ZF.—(1) The trustee for a real estate investment trust may by notice in writing require any unitholder of the trust within such reasonable time as is specified in the notice –

(a) to inform it whether he holds any voting units in the trust as beneficial owner or as trustee; and

(b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(2) Where the trustee for a real estate investment trust is informed in pursuance of a notice given to any person under subsection (1) or

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under this subsection that any other person has an interest in any of the voting units in the trust, the trustee may by notice in writing require that other person within such reasonable time as is specified in the notice –

(a) to inform it whether he holds that interest as beneficial owner or as trustee; and

(b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

(3) The trustee for a real estate investment trust to which this section applies may by notice in writing require any unitholder of the trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the trust held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

(4) The notice referred to in subsections (1) and (3) shall include such information and matters as may be prescribed by the Authority, and the delivery of such notice shall comply with such other requirements as may be prescribed by the Authority.

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(5) Whenever the trustee for a real estate investment trust receives information from a person in pursuance of a requirement imposed on him under this section with respect to units held by a unitholder of the trust, it shall be under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137ZD –

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received in pursuance of the requirement.

(6) Section 137ZD shall apply in relation to the part of the register referred to in subsection (5) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (5).

(7) Subject to subsections (8), (9) and (10), any person who –

(a) fails to comply with a notice under this section; or

(b) in purported compliance with such a notice, makes any statement which is false or misleading in a material particular,

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shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(8) Where –

(a) any failure by a person to comply with a notice under this section is committed intentionally or recklessly; or

(b) in purported compliance with such a notice, a person intentionally or recklessly makes any statement which is false or misleading in a material particular,

such person 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 2 years or to both.

(9) No proceedings under this section shall be instituted against a person for an offence under this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that offence.

(10) A person shall not be guilty of an offence under this section if he proves that the information in question was already in the possession

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of the trustee for a real estate investment trust that the requirement to give it was for any other reason frivolous or vexatious.

Subdivision (2) — Disclosure by Directors and Chief Executive Officer of Responsible Person

Duty of director and chief executive officer of responsible person for real estate investment trust to notify his interests

137ZG.—(1) A director or chief executive officer of the responsible person for a real estate investment trust shall give notice in writing to the responsible person of particulars of —

(a) units in the trust, being units in which the director or chief executive officer, as the case may be, has an interest and the nature and extent of that interest;

(b) debentures or units of debentures of the trust in which the director or chief executive officer, as the case may be, has an interest and the nature and extent of that interest; and

(c) any other securities which are held, whether directly or indirectly, by the director or chief executive officer, as the case

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may be, or in which he has an interest and the nature and extent of that interest, as the Authority may prescribe for the purposes of the disclosure under this section.

(2) The notice referred to in subsection (1) shall be given within 2 business days after —

(a) the date on which the director or chief executive officer became a director or chief executive officer, as the case may be, of the responsible person for a real estate investment trust; or

(b) the date on which the director or chief executive officer became a unitholder of the real estate investment trust or acquired an interest in the units in, or debentures or units of debentures of, the trust, as the case may be,

whichever last occurs.

(3) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(4) For the purposes of this section, an interest of a member of a director's or chief executive officer's family shall be treated as an interest of the director or chief executive officer of the responsible

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person of a real estate investment trust and the words “member of a director’s or chief executive officer’s family” shall include his –

(a) spouse; and

(b) son, adopted son, step-son, daughter, adopted daughter and step-daughter, who is below the age of 18 years.

Duty of director or chief executive officer of responsible person for real estate investment trust to notify responsible person of change in interests

137ZH.—(1) Where there is a change in the information and matters referred to in section 137ZG(1) of which notice has or should have been given to the responsible person for a real estate investment trust, the director or chief executive officer of the responsible person shall give notice in writing to the responsible person within 2 business days after he becomes aware of such a change.

(2) The first-mentioned notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) The provision of section 137ZG(4) shall apply to this section with

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such modifications and qualifications as may be necessary.

Penalties under this Subdivision

137ZI.—(1) Subject to subsections (2) and (3), any director or chief executive officer of the responsible person for a real estate investment trust who –

(a) contravenes section 137ZG(1), (2) or (3) or 137ZH(1) or (2);
or

(b) in purported compliance with section 137ZG(3) or 137ZH(2), makes to the responsible person a statement which 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 \$25,000.

(2) Where –

(a) any contravention by a director or chief executive officer of the responsible person for a real estate investment trust of section 137ZG(1), (2) or (3) or 137ZH(1) or (2) is committed intentionally or recklessly; or

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(b) in purported compliance with section 137U(3) or 137V(2), a director or chief executive officer of the responsible person for a real estate investment trust intentionally or recklessly makes to the responsible person a statement which is false or misleading in a material particular,

such director or chief executive officer 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 2 years or to both.

(3) No proceedings under this section shall be instituted against a director or chief executive officer for an offence in respect of a contravention of section 137ZG or 137ZH after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

Subdivision (3) — Disclosure by Shareholders of Responsible Person

Duty of shareholder to notify responsible person for real estate investment trust of his interests or change in interests

137ZL.—(1) Where there is a change in the percentage level of the

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interest or interests of a shareholder of the responsible person for a real estate investment trust in voting shares in the responsible person, and the interest or interests of the shareholder in voting shares in the responsible person following such a change reaches or crosses (either above or below) the percentage point of 15%, 30%, 50% or 75%, the shareholder shall give notice in writing to the responsible person within 2 business days after he becomes aware of his interests or the change in his interests.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) In subsection (1), “percentage level”, in relation to a shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes attached to —

(a) all the voting shares (excluding treasury shares) in the responsible person for a real estate investment trust; or

(b) where the share capital of the responsible person for a real estate investment trust is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) included in the class concerned.

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and, if it is not a whole number, rounding that figure down to the next whole number.

Penalties under this Subdivision

137ZK.—(1) Subject to subsections (2) and (3), a person who –

(a) contravenes section 137ZJ(1) or (2); or

(b) in purported compliance with 137ZJ, makes to the responsible person for a real estate investment trust a statement which 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 \$25,000.

(2) Where –

(a) any contravention by a person of section 137ZJ(1) or (2) is committed intentionally or recklessly; or

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(b) in purported compliance with 137ZJ, a person intentionally or recklessly makes to the responsible person of a real estate investment trust a statement which is false or misleading in a material particular,

such person 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 2 years or to both.

(3) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of section 137ZJ after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

Subdivision (4) — Disclosure by Responsible Person

Duty of responsible person for real estate investment trust to make disclosure

137ZL.—(1) Where the responsible person for a real estate investment trust —

(a) acquires, or disposes of, interests in units in the real estate

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investment trust; or

(b) has been notified in writing by a substantial unitholder or a director, chief executive officer or shareholder of the responsible person in pursuance of a requirement imposed on him under section 137ZG,

the responsible person shall announce or otherwise disseminate the information stated in the notification to the securities market operated by the securities exchange as soon as possible and in any case, no later than the end of the following business day, upon receipt of the notification from the substantial unitholder, director, chief executive officer or shareholder, as the case may be.

(2) The notice referred to in subsection (1) shall include such information and matters as may be prescribed by the Authority, and complies with such prescribed form.

(3) Subject to subsections (4) and (5), the responsible person for a real estate investment trust that contravenes subsection (1) or (2), or in purported compliance with subsection (2), makes a statement which is false or misleading in a material particular, the responsible person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(4) Where any contravention by the responsible person for a real estate

Existing Provision

Proposed Amendment

investment scheme of subsection (1) or (2) is committed intentionally or recklessly, or a statement made by the responsible person is false or misleading in a material particular and such statement is made intentionally or recklessly, the responsible person and every director of the responsible person who intentionally or recklessly contravenes or permits or authorizes the contravention of this section or permits the making of the false or misleading statement, as the case may be, shall be guilty of an offence and –

(a) in the case of the responsible person, shall be liable on conviction to a fine not exceeding \$250,000; and

(b) in the case of the director, shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) No proceedings under this section shall be instituted against a person for an offence in respect of a contravention of this section after a court has made an order against him for the payment of a civil penalty under section 137ZM in respect of that contravention.

Existing Provision

Proposed Amendment

Division 5 – Civil Liability

Civil penalty

137ZM. —(1) Whenever it appears to the Authority that any person has contravened any provision in Division 2, 3 or 4 of this Part intentionally or recklessly, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision as specified in accordance with subsection (1), the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(3) Notwithstanding subsection (2), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of a contravention of a provision referred to in subsection (1) and the order may be made on such terms as may be agreed between the Authority and the defendant

(4) Nothing in this section shall be construed to prevent the Authority from entering into an agreement with any person to pay, with or



Existing Provision

Proposed Amendment

without admission of liability, a civil penalty within the limits referred to in subsection (2) for a contravention of any provision as specified in accordance with subsection (1).

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

(6) If the person fails to pay the civil penalty imposed on him within the time specified in the court order referred to in subsection (3) or specified under the agreement referred to in subsection (4), the Authority may recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

(7) Any defence that is available to a person who is prosecuted for a contravention of any provision as specified in accordance with subsection (1), shall also be available to a defendant to an action under this section in respect of that contravention.

Action under section 137ZM not to commence, etc., in certain situations

137ZN. —(1) An action under section 137ZM shall not be commenced after the expiration of 6 years from the date of the contravention of any of the provisions in Division 2, 3 or 4 of this Part.

Existing Provision

Proposed Amendment

(2) An action under section 137ZM shall not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of any of the provisions in Division 2, 3 or 4 of this Part, except where he has been acquitted on the ground of the withdrawal of the charge against him.

(3) An action under section 137ZM shall be stayed after criminal proceedings have been commenced against the person for the contravention of any of the provisions in Division 2, 3 or 4 of this Part, and may thereafter be continued only if —

(a) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal;
or

(b) the charge against him in respect of that contravention has been withdrawn.

Jurisdiction of District Court

137ZO. A District Court shall have jurisdiction to hear and determine any action under section 137ZM regardless of the monetary amount.

Existing Provision

Proposed Amendment

Rules of Court

137ZP. — 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 section 137ZM; and

(b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

Exercise of certain powers in relation to securities

143. —(1) This section shall apply where the Authority considers that —

(a) it may be necessary to prohibit dealing in securities of, or made available by, a corporation under ~~section 32~~;

sections 32, 34 or 81

(b) a person may have contravened any of the provisions of Part XII in relation to securities of, or made available by, a corporation; or

Existing Provision

(c) a person may have contravened any of the provisions of Division 4 of Part IV of the Companies Act (Cap. 50) or Division 2 of Part VII in relation to securities in a corporation.

(2) The Authority may require an officer of a corporation referred to in subsection (1) to disclose to the Authority any information of which he is aware and which may have affected any dealing that has taken place, or which may affect any dealing that may take place, in securities of, or made available by, the corporation.

(3) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

(a) any dealing in securities of, or made available by, a corporation referred to in subsection (1);

(b) any advice given, or any report or analysis issued or published concerning such securities, by the holder of a capital markets services licence to deal in securities, or a representative of such a holder;

(c) the financial position of any business carried on by a person who is or has been (either alone or together with

Proposed Amendment

Existing Provision

another person or other persons) the holder of a capital markets services licence to deal in securities and who has dealt in or given advice or issued or published a report or an analysis concerning such securities;

(d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is a person referred to in that paragraph; or

(e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to deal in securities, being a book relating to dealings in such securities,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

Exercise of certain powers in relation to futures contracts

144. —(1) This section shall apply where the Authority considers that —

(a) it may be necessary to give a direction or take any action in relation to any trading in futures contracts under ~~section 34~~, or

sections 34 or 81

Proposed Amendment

Existing Provision

(b) a person may have contravened any of the provisions of Part XII in relation to futures contracts.

(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

(a) any trading in futures contracts;

(b) any advice given, or any report or analysis issued or published concerning such futures contracts, by the holder of a capital markets services licence to trade in futures contracts, or a representative of such a holder;

(c) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to trade in futures contracts and has traded in or given advice or issued or published a report or an analysis concerning such futures contracts;

(d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons, at least one of

Proposed Amendment

Existing Provision

whom is a person referred to in that paragraph; or

(e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to trade in futures contracts, being a book relating to trading in such futures contracts,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

Proposed Amendment

New provision, immediately after section 150

Confidentiality of inspection reports

150A —(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an inspection under section 150 in respect of any approved holding company, securities exchange, futures exchange, recognised market operator, person operating an exempt market, exempt market operator, designated clearing house, holder of a capital markets service licence, exempt person or representative under the inspection (referred to in this section as the inspected person), the report shall not be disclosed by the inspected person, or any of its officer or auditor, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made

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(a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that inspected person;

Existing Provision

Proposed Amendment

(b) by any officer or auditor of the inspected person to any other officer or auditor, solely in connection with the performance of their duties in that inspected person; or

(c) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2) (c), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, or any of its officer or auditor and the inspected person, the officer or auditor, as the case may be, shall comply with such conditions and restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the inspected person.

(5) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he has as soon as practicable surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he has

Existing Provision

Proposed Amendment

as soon as practicable taken all reasonable steps to ensure that all electronic copies of the report have been deleted and that the report and all copies thereof in other forms have been surrendered to the Authority.

(6) Any person who contravenes subsection (1), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, or to imprisonment for a term not exceeding 2 years or both.

New provision, immediately after section 152

Confidentiality of investigation reports

152A —(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an investigation under section 152 in respect of any person under the investigation (referred to in this section as the investigated person), the report shall not be disclosed by the investigated person, or any of its officer or auditor, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made

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(a) by the investigated person to any officer or auditor of that investigated person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that investigated person;

Existing Provision

Proposed Amendment

(b) by any officer or auditor of the investigated person to any other officer or auditor, solely in connection with the performance of their duties in that investigated person; or

(c) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2) (c), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, or any of its officer or auditor and the investigated person, the officer or auditor, as the case may be, shall comply with such conditions and restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the investigated person.

(5) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he has as soon as practicable surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he has as soon as practicable taken all reasonable steps to ensure that

Existing Provision

Proposed Amendment

all electronic copies of the report have been deleted and that the report and all copies thereof in other forms have been surrendered to the Authority.

(6) Any person who contravenes subsection (1), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, or to imprisonment for a term not exceeding 2 years or both.

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.

(2) Where a person claims, before making a statement 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 ~~under this section~~; but

in respect of any offence under section 162

Existing Provision

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

Proposed Amendment

(3) Nothing in this Division shall —

(a) compel an advocate and solicitor to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or

(b) authorise the taking of any such document or other material which is in his possession.

(4) An advocate and solicitor who refuses to disclose the information or produce the document or other material referred to in subsection (3) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

Existing Provision

Proposed Amendment

New provision, immediately after Division 3 of Part IX

Division 4 — Transfer of evidence

Evidence obtained by the Authority

168A. – (1) Notwithstanding the provisions of any written law or any requirement imposed thereunder or any rule of law, any information obtained by the Authority pursuant to Part IX of this Act may be disclosed to the body known as the Commercial Affairs Department which is constituted as a department of the Singapore Police Force under the Police Force Act (Cap. 235) (referred to in this section as the Commercial Affairs Department) and to the Public Prosecutor, if the Authority is satisfied that such information may –

(a) enable the Commercial Affairs Department to investigate an alleged or suspected contravention of any provision under Part XII of this Act; or

(b) enable the Public Prosecutor to bring or continue with any criminal proceedings against any person for a contravention of any provision of this Act.

(2) For the avoidance of doubt, any information disclosed under subsection (1) shall be admissible in criminal proceedings referred to

Existing Provision

Proposed Amendment

in subsection (1)(b) if it complies with any requirement governing the admissibility of evidence under any other written law, except that it shall not be inadmissible by virtue only of the fact that such information was not obtained pursuant to an examination by a police officer.

Evidence obtained by the Police

168B. – (1) Notwithstanding the provisions of any written law or any requirement imposed thereunder or any rule of law, any information obtained by a police officer or a commercial affairs officer appointed under the Police Force Act (Cap. 235), pursuant to Chapters VI and XIII of the Criminal Procedure Code (Cap. 68), may be disclosed to the Authority if the Public Prosecutor is satisfied that such information may enable the Authority –

(a) to enforce any provision of this Act or any written direction issued under this Act;

(b) to investigate an alleged or suspected contravention of any provision of this Act or of any written direction issued under this Act; or

(c) to exercise any of its powers or to perform any of its functions or duties under this Act, including but not limited to bringing an action in court under section 232 against any person

Existing Provision

Proposed Amendment

to seek an order of civil penalty.



PART X

**ASSISTANCE TO FOREIGN REGULATORY
AUTHORITIES**

(2) For the avoidance of doubt, any information disclosed to the Authority under subsection (1) shall be admissible in any civil proceeding under this Act to which the Authority is, or is proposed to be, a party to, if it complies with any requirement governing the admissibility of evidence under any other written law, except that it shall not be inadmissible by virtue only of the fact that such information was obtained pursuant to an examination by a police officer under section 121 of the Criminal Procedure Code (Cap. 68).

Interpretation of this Part

169. In this Part, unless the context otherwise requires –
.....

“material” include any information book, document or other record in any form whatsoever, and an container or article relating thereto;



“parent entity”, in relation to a holder of a capital markets services licence, means an entity which is able to exercise a significant influence over the direction and management of the holder or which has a controlling interest in the holder;

“parent supervisory authority”, in relation to a holder of a capital markets services licence, means the supervisory authority which is responsible, under the laws of the country or territory where the holder of the capital markets services licence or parent entity is incorporated, formed or established, for supervising the holder’s or parent entity’s activities, as the case may be;

Existing Provision

Proposed Amendment

New division heading, immediately after section 169

Division 1 – Assistance for Supervision, Investigation and Enforcement

←
Conditions for provision of assistance

170. (1) The Authority may provide the assistance referred to in section 172 to a regulatory authority of a foreign country....

Offences under this Part ←

Division

173. Any person who —

(a) without reasonable excuse refuses or fails to comply with an order under section 172 (1) (b), (c) or (d);

(b) in purported compliance with an order under section 172 (1) (b) or (c), furnishes to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or

(c) in purported compliance with an order made under section 172 (1) (d), makes a statement to the Authority that is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not

Existing Provision

exceeding 2 years or to both.

Proposed Amendment

New provision, immediately after section 173

Division 2 – Assistance for Inspection

Inspection in Singapore by parent supervisory authority

174A—(1) In relation to a holder of a capital markets service licence or its parent corporation incorporated outside Singapore, a parent supervisory authority may, with the prior written approval of the Authority and under conditions of secrecy, conduct an inspection in Singapore of the books of the holder of the licence in Singapore in accordance with this section if the following conditions are satisfied:

(a) the inspection is required by the parent supervisory authority for the sole purpose of carrying out its supervisory functions;

(b) the parent supervisory authority —

(i) is prohibited by the laws applicable to the parent supervisory authority from disclosing information obtained by it in the course of the inspection to any other person; or

(ii) has given to the Authority such written undertaking, as to the confidentiality of the information obtained, as the Authority may determine; and

(c) the parent supervisory authority has given a written undertaking to the Authority to comply with such conditions as the Authority may impose under subsection (3).

Existing Provision

Proposed Amendment

(2) In deciding whether to grant its approval to a parent supervisory authority under subsection (1), the Authority may also have regard to the following:

(a) whether the parent supervisory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the parent supervisory authority for similar assistance;

(b) whether the parent supervisory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance the parent supervisory authority has requested for; and

(c) in the case of a parent supervisory authority of a parent corporation, whether the parent corporation carries out substantial operations in the jurisdiction of the parent supervisory authority.

(3) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, require the parent supervisory authority to comply with conditions or restrictions relating to —

(a) the classes of information to which the parent supervisory authority shall or shall not have access in the course of the inspection;

(b) the conduct of the inspection;

Existing Provision

Proposed Amendment

(c) the use or disclosure of any information obtained in the course of the inspection; and

(d) such other matters as the Authority may determine.

(4) Subject to compliance by a parent supervisory authority with such conditions or restrictions as the Authority may impose under subsection (3), the holder of a capital markets licence under inspection

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(a) shall afford the parent supervisory authority access to such books of the holder of the capital markets service licence under inspection, and provide such information (including information relating to the holder of a capital markets services licence's internal control systems) and facilities as may be required to conduct the inspection; and

(b) shall not be required to afford the parent supervisory authority access to its books or to provide information or facilities at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the holder of the capital markets services licence.

(5) A parent supervisory authority may, with the prior written approval of the Authority request the auditors of the parent corporation or the head office, as the case may be, of the holder of a capital markets services licence or appoint any person to conduct the inspection under subsection (1) and in such event, this section (other than this subsection) shall apply to the auditors or the person, as the

Existing Provision

Proposed Amendment

case may be, as if a reference to the parent supervisory authority or any official of the parent supervisory authority in this section includes a reference to the auditors or the person.

(6) Any holder of a capital markets services licence which refuses or neglects, without reasonable excuse, to afford access to any book or provide any information or facility as may be required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Confidentiality of inspection reports

174B —(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by a parent supervisory authority upon an inspection under section 174A in respect of any holder of a capital markets services licence, the report shall not be disclosed by the holder of the capital markets service licence, or any of its officer or auditor, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made

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(a) by the holder of a capital markets services licence to any officer or auditor of that holder solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that holder of a capital markets services licence;

(b) by any officer or auditor of the holder of a capital markets services licence to any other officer or auditor, solely in

Existing Provision

Proposed Amendment

connection with the performance of their duties in that holder of a capital markets services licence;

(c) to the Authority if requested by the Authority, where the report has been produced by a parent supervisory authority; or

(d) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2) (d), the Authority may impose such conditions or restrictions as it thinks fit on the holder of a capital markets services licence, or any of its officer or auditor and the holder of the capital markets services licence, the officer or auditor, as the case may be, shall comply with such requirements and restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the holder of a capital markets service licence.

(5) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he has as soon as practicable surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

Existing Provision

Proposed Amendment

	<p>(c) where the disclosure was made in an electronic form, he has as soon as practicable taken all reasonable steps to ensure that <u>all electronic copies of the report have been deleted and that the report and all copies thereof in other forms have been surrendered to the Authority.</u></p> <p>(6) Any person who contravenes subsection (1), (3) or (5) shall be <u>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 both.</u></p>
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Interpretation of this Part

175. In this Part, “member”, in relation to a ~~securities exchange or futures exchange~~, means a person who —

an approved exchange

(a) holds membership of any class or description of the ~~securities exchange or futures exchange~~, whether or not he holds any share in the share capital of such exchange; and

an approved exchange

(b) is licensed by the Authority to carry on the business of dealing in securities or trading in futures contracts, as the case may be.

Existing Provision

Proposed Amendment

Establishment of fidelity fund

176. —(1) Each ~~securities exchange and each futures exchange~~ shall establish, keep and administer a fidelity fund (referred to in this Part as a fidelity fund or fund).

approved exchange

(2) The assets of the fidelity fund of ~~a securities exchange or futures exchange~~ shall —

an approved exchange

(a) be the property of the exchange;

(b) be kept separate from all other property of the exchange;
and

(c) be held in trust for the purposes set out in this Part.

Moneys constituting fidelity fund

177. The fidelity fund of ~~a securities exchange or futures exchange~~ shall consist of —

an approved exchange

(a) all moneys paid to the exchange by its members in accordance with this Part;

Existing Provision

- (b) all moneys paid to the fund by the exchange;
- (c) all interest and profits from time to time accruing from the investment of the fund;
- (d) all moneys recovered by or on behalf of the exchange in the exercise of any right of action conferred by this Part;
- (e) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the exchange under section 194; and
- (f) all other moneys lawfully paid into the fund.

Payments out of fidelity fund

179. Subject to this Part, there shall be paid out of the fidelity fund of ~~a securities exchange or futures exchange~~ as required and in such order as the exchange considers proper —

an approved exchange

- (a) the amount of all claims, including costs, allowed by the exchange or established against the exchange under this Part;

Existing Provision

(b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;

(c) all premiums payable in respect of contracts of insurance or indemnity entered into by the exchange under section 194;

(d) all expenses incurred or involved in the administration of the fund, including the salaries and wages of persons employed by the exchange in relation thereto; and

(e) all other moneys payable out of the fund in accordance with this Act.

Proposed Amendment

Accounts of fund

180. —(1) ~~A securities exchange or futures exchange~~ shall establish and keep proper accounts of its fidelity fund and shall, within 5 months from the last day of each financial year of that exchange, cause a balance-sheet in respect of such accounts to be made out as at the last day of that financial year.

An approved exchange

Existing Provision

Proposed Amendment

(2) The ~~securities exchange or futures exchange~~ shall appoint an auditor to audit the accounts of the fidelity fund.

approved exchange

(3) The auditor appointed by the ~~securities exchange or futures exchange~~ shall —

approved exchange

(a) regularly and fully audit the accounts of the fidelity fund;
and

(b) audit each balance-sheet and cause it to be laid before the exchange not later than 3 months after the balance-sheet was made out.

Fidelity fund to consist of amount of \$20 million, etc.

181. The fidelity fund of a ~~securities exchange or futures exchange~~ shall consist of an amount of not less than —

an approved exchange

(a) \$20 million; or

(b) such other amount as the Authority may, by order

Existing Provision

published in the *Gazette*, specify in substitution of the amount specified under paragraph (a),

Proposed Amendment

to be paid to the credit of the fund on the approval of the exchange under this Act or at any time after its approval as determined by the Authority.

Provisions if fund is reduced below minimum amount

182. If the fidelity fund of ~~a securities exchange or futures exchange~~ is reduced below the minimum amount referred to in section 181, the exchange shall take steps to make up the deficiency —

an approved exchange

(a) by transferring an amount that is equal to the deficiency from other funds of the exchange to the fidelity fund; and

(b) in the event that there are insufficient funds to transfer under paragraph (a), by requiring each member of the exchange to contribute to the fund such amount as the exchange may determine.

Levy to meet liabilities

183. —(1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are then ascertained of ~~a securities exchange or futures exchange~~ in relation thereto, the ~~securities exchange or~~

an approved exchange

approved exchange

<u>Existing Provision</u>	<u>Proposed Amendment</u>
<p>futures exchange —</p> <p>(a) may impose on every member a levy of such amount as it thinks fit; or</p> <p>(b) if ordered by the Authority, shall impose a levy of such amount which shall in the aggregate be equivalent to the amount so specified in the order.</p> <p>(2) The amount of such levy shall be paid within the time and in the manner specified by the securities exchange or futures exchange either generally or in relation to any particular case.</p> <p>(3) No member of a securities exchange or futures exchange shall be required to pay by way of levy under this section more than \$300,000 in the aggregate in any particular case.</p> <p>Power of securities exchange or futures exchange to make advances to fund</p> <p>184. —(1) A securities exchange or futures exchange may, out of its general funds, give or advance any sum of money to its fidelity fund on such terms as it thinks fit.</p>	<p><u>approved exchange</u></p> <p><u>an approved exchange</u></p> <p><u>approved exchange</u></p> <p><u>An approved exchange</u></p>

Existing Provision

Proposed Amendment

(2) Any sum of money advanced by ~~a securities exchange or futures exchange~~ under subsection (1) may be repaid out of the fidelity fund to the general funds of the ~~securities exchange or futures exchange~~, as the case may be.

an approved exchange

an approved exchange

Investment of fund

185. Any moneys in a fidelity fund that are not immediately required for any purpose referred to in this Part may be invested by ~~a securities exchange or futures exchange~~ in any manner in which trustees are for the time being authorised by law to invest trust funds.

an approved exchange

Application of Fund

186. —(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating any person (other than an accredited investor) who suffers pecuniary loss because of a ~~defalcation committed~~ —

misapplication

~~(a) in the course of, or in connection with, a dealing in securities, or the trading of a futures contract;~~

Existing Provision

Proposed Amendment

(a) in the course of, or in connection with, dealing in securities, or trading of a futures contract, in respect of a transaction that is –

(i) traded or to be traded on an approved exchange;

(ii) cleared or to be cleared by a designated clearing house;
or

(iii) cleared or to be cleared by a clearing facility for an overseas futures exchange or overseas securities exchange which has a trading linkage with an approved exchange;

(b) by a member of ~~a securities exchange or futures exchange~~
or by any agent of such member; and

an approved exchange

(c) in relation to any money or other property which, after the establishment of the fidelity fund was entrusted to or received —

(i) by that member or by any of its agents for or on behalf of any other person; or

(ii) by that member either as the sole trustee or as of

Existing Provision

its agents as trustee or for or on behalf of the trustees of that money or property.

Proposed Amendment

(2) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Bankruptcy Act (Cap. 20) an amount not greater than the amount that the Official Assignee or the trustee in bankruptcy, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt, who is a member of a securities exchange or futures exchange, are insufficient to satisfy any debts arising from dealings in securities or trading in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt member.

an approved exchange

in respect of a transition that is –

- (a) traded or to be traded on an approved exchange;
- (b) cleared or to be cleared by a designated clearing house; or
- (c) cleared or to be cleared by a clearing facility for an overseas futures exchange or overseas securities exchange which has a trading linkage with an approved exchange;

(3) Subsection (2) shall apply in the case of a member of a securities exchange or futures exchange who has made a voluntary arrangement with his creditors under Part V of the Bankruptcy Act in like manner as that subsection applies in the case of a member who has become bankrupt.

an approved exchange

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

- (a) a reference to a trustee in bankruptcy in subsection (2) shall be deemed to be a reference to a nominee within the

Existing Provision

meaning of Part V of the Bankruptcy Act;

(b) a reference to debts proved in bankruptcy in subsection (2) shall be deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part V of the Bankruptcy Act; and

(c) a reference to the bankrupt in subsection (2) shall be deemed to be a reference to the person who made the voluntary arrangement under Part V of the Bankruptcy Act.

(5) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to a liquidator of a member of a ~~securities exchange or futures exchange~~ that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member are insufficient to satisfy any debts arising from dealings in securities or trading in futures contracts that have been proved in the liquidation of the member.

(6) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1), no claim for a payment under subsection (2) or (5) shall be made in respect of the same pecuniary loss.

(7) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (2), no claim for compensation

Proposed Amendment

an approved exchange

in respect of a transition that is –

(a) traded or to be traded on an approved exchange;

(b) cleared or to be cleared by a designated clearing house; or

(c) cleared or to be cleared by a clearing facility for an overseas futures exchange or overseas securities exchange which has a trading linkage with an approved exchange;

Existing Provision

under subsection (1) or for a payment under subsection (5) shall be made in respect of the same deficiency.

(8) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (5), no claim for compensation under subsection (1) or for a payment under subsection (2) shall be made in respect of the same deficiency.

(9) Moneys paid under subsection (2) or (5) may only be applied by the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator, as the case may be, for the purpose of satisfying debts arising from dealings in securities or trading in futures contracts, and for no other purpose.

(10) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund under this Part for the purpose of —

(a) compensating pecuniary loss under subsection (1); or

(b) making a payment under subsection (2) or (5),

shall not, in respect of each member, exceed the prescribed amount*.

* Prescribed amount shall be \$2 million for the purposes of section

Proposed Amendment

Existing Provision

186 (10) — see G.N. No. S 367/2005.

(11) Subject to the provisions of this section —

(a) the amount that may be paid out of the fidelity fund to each claimant under subsection (1) in relation to each member; or

(b) the amount that the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator may pay to each creditor of a member from any amount paid to the Official Assignee, trustee in bankruptcy, nominee or liquidator, as the case may be, under subsection (2) or (5),

shall not exceed the prescribed amount**.

** Prescribed amount shall be \$50,000 for the purposes of section 186 (11) — see G.N. No. S 367/2005.

(12) For the purposes of subsections (10) and (11), any amount paid out of the fidelity fund shall, to the extent to which the fund is subsequently reimbursed therefor, be disregarded.

(13) In this section, “agent”, in relation to a member of a securities exchange or futures exchange

← an approved exchange

Proposed Amendment

Existing Provision

(a) means a person who is a director, an officer, an employee or a representative of the member; and

(b) includes a person who has been, but at the time of any ~~defalcation~~ in question has ceased to be, a director, an officer, an employee or a representative of the member if, at the time of the ~~defalcation~~, the person claiming compensation has reasonable grounds for believing that person to be a director, an officer, an employee or a representative of the member.

misapplication

misapplication

(14) Nothing in this Part shall be construed as to allow a person to claim compensation against the fidelity fund of a futures exchange if —

(a) the person has suffered pecuniary loss because of a ~~defalcation~~ committed by a member of the exchange or by any agent of the member; and

misapplication

(b) such ~~defalcation~~ is in respect of moneys deposited by that person with the member or moneys belonging to that person held by that member, in connection with the trading of a contract which is not a futures contract that is cleared or to be cleared by a designated clearing house or a futures exchange in Singapore.

misapplication

Proposed Amendment

Existing Provision

Proposed Amendment

Claims against fund

187. —(1) Subject to this Part, every person who suffers pecuniary loss referred to in section 186 shall be entitled to claim compensation out of the fidelity fund and to take proceedings in the High Court under this Act against a ~~securities exchange or futures exchange~~ to establish such claim.

an approved exchange

(2) A person shall not have any claim against the fidelity fund in respect of a ~~defalcation~~ in respect of money or other property which prior to the commission of the ~~defalcation~~ had, in the due course of the administration of a trust, ceased to be under the sole control of the director or directors of the member of a ~~securities exchange or futures exchange~~.

misapplication

misapplication

an approved exchange

(3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation out of a fidelity fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of the loss.

Notice calling for claims against fund

188. —(1) A ~~securities exchange or futures exchange~~ may cause to

An approved exchange

Existing Provision

be published in a daily newspaper published and circulating generally in Singapore a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the date of publication, on or before which claims for compensation out of the fidelity fund, in relation to the person specified in the notice, may be made.

Proposed Amendment

- (2) A claim for compensation out of a fidelity fund in respect of a ~~defalcation~~ shall be made in writing to the ~~securities exchange or futures exchange~~, as the case may be —
- misapplication
 - approved exchange
- (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or
- (b) where no such notice has been published, within 6 months after the claimant became aware of the ~~defalcation~~.
- misapplication
- (3) Any claim which is not made in accordance with subsection (2) shall be barred unless the ~~securities exchange or futures exchange~~ otherwise allows.
- approved exchange
- (4) No action for damages shall lie against a ~~securities exchange or futures exchange~~ or against any member or employee of the securities exchange or futures exchange by reason of any notice published in good faith and without malice for the purposes of this section.
- misapplication
 - approved exchange

Existing Provision

Proposed Amendment

Power of ~~securities exchange or futures exchange~~ to settle claims

approved exchange

189. —(1) A ~~securities exchange or futures exchange~~ may, subject to this Part, allow and settle any proper claim for compensation out of a fidelity fund at any time after the commission of the ~~defalcation~~ in respect of which the claim arose.

An approved exchange

(2) Subject to subsection (3), a person shall not commence proceedings under this Part against a ~~securities exchange or futures exchange~~ without the consent of the ~~securities exchange or futures exchange~~, as the case may be, unless —

misapplication

an approved exchange

approved exchange

(a) the ~~securities exchange or futures exchange~~ has disallowed his claim; and

approved exchange

(b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property, in respect of which the ~~defalcation~~ was committed, available against a member of the ~~securities exchange or futures exchange~~ in relation to whom or to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.

misapplication

approved exchange

Existing Provision

Proposed Amendment

(3) A person who has been refused consent to commence proceedings under this Part by ~~a securities exchange or futures exchange~~ under subsection (2) may apply for leave to a Judge of the High Court in chambers who may make such order in the matter as he thinks fit.

an approved exchange

(4) ~~A securities exchange or futures exchange~~ shall, after disallowing (whether wholly or in part) any claim for compensation out of a fidelity fund, serve notice of such disallowance in the prescribed form on the claimant or his solicitor.

An approved exchange

(5) No proceedings against ~~a securities exchange or futures exchange~~ in respect of a claim which has been disallowed by the exchange shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

an approved exchange

(6) In any proceedings brought to establish a claim —

(a) evidence of any admission or confession by, or other evidence which would be admissible against, ~~the member of a securities exchange or futures exchange~~ or other person by whom it is alleged a ~~defalcation~~ was committed, shall be admissible to prove the commission of the ~~defalcation~~, notwithstanding that the member or other person is not the defendant in or a party to those proceedings; and

an approved exchange

misapplication

misapplication

Existing Provision

Proposed Amendment

(b) all defences which would have been available to that member or person shall be available to the ~~securities exchange or futures exchange~~.

approved exchange

(7) ~~A securities exchange or futures exchange~~ or, where proceedings are brought to establish a claim, the High Court, if satisfied that the ~~defalcation~~ on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the ~~defalcation~~ has not been convicted or prosecuted therefor or that the evidence on which the ~~securities exchange or futures exchange~~ or the High Court, as the case may be, acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the ~~defalcation~~.

An approved exchange

misapplication

misapplication

approved exchange

misapplication

Power of ~~securities exchange or futures exchange~~ to require production of evidence

approved exchange

An approved exchange

190. —(1) ~~A securities exchange or futures exchange~~ may require any person to produce and deliver any contract note, document or statement of evidence necessary to support any claim made, or necessary for the purpose either of exercising its rights against a member of a ~~securities exchange or futures exchange~~ or the directors of that member or any other person concerned, or of enabling criminal proceedings to be taken against any person in

an approved exchange

misapplication

Existing Provision

Proposed Amendment

respect of a ~~defalcation~~.

(2) Where a person who is required under subsection (1) to produce or deliver any contract note, document or statement of evidence fails to do so, the ~~securities exchange or futures exchange~~ may disallow any claim by him under this Part.

approved exchange

approved exchange

Subrogation of ~~securities exchange or futures exchange~~ to rights, etc., of claimant upon payment from fund

191. On payment out of a fidelity fund of any moneys in respect of any claim under this Part, the ~~securities exchange or futures exchange~~ shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him by reason of the ~~defalcation~~ on which the claim was based.

approved exchange

misapplication

Payment of claims only from fund

192. No moneys or other property belonging to a ~~securities exchange or futures exchange~~, other than the fidelity fund, shall be available for the payment of any claim under this Part, whether the claim is allowed by the ~~securities exchange or futures exchange~~ or is made the subject of an order of the High Court.

an approved exchange

approved exchange

Existing Provision

Proposed Amendment

Provision where fund insufficient to meet claims or where claims exceed total amount payable

193. —(1) Where the amount at credit in a fidelity fund is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders of the High Court have been made, then the amount at credit in the fund shall, subject to subsection (2), be apportioned between the claimants in such manner as the ~~securities exchange or futures exchange~~ thinks equitable, and such claim shall, so far as it then remains unpaid, be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

approved exchange

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the High Court have been made in relation to a ~~defalcation~~ by or in connection with a member of a

misapplication

~~securities exchange or futures exchange~~ exceeds the total amount which may, pursuant to section 186 (10), be paid under this Part in respect of that member, then such total amount shall be apportioned between the claimants in such manner as the ~~securities exchange or futures exchange~~ thinks equitable.

an approved exchange

approved exchange

Existing Provision

Proposed Amendment

(3) Upon payment out of the fidelity fund of such total amount in accordance with the apportionment of all such claims under subsection (2), any order relating thereto and all other claims against the fund which may thereafter arise or be made in respect of that defalcation by or in connection with that member shall be absolutely discharged.

misapplication

approved exchange

Power of ~~securities exchange or futures exchange~~ to enter into contracts of insurance

194. —(1) ~~A securities exchange or futures exchange~~ may in its discretion, enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Singapore whereby the ~~securities exchange or futures exchange~~ will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part.

An approved exchange

approved exchange

(2) Any contract under subsection (1) may be entered into in relation to members generally, or in relation to any particular member or members named therein, or in relation to members generally with the exclusion of any particular member or members named therein.

an approved exchange

(3) No action shall lie against ~~a securities exchange or futures exchange~~ or against any member or employee of ~~a securities exchange or futures exchange~~ for injury alleged to have been

an approved exchange

Existing Provision

suffered by any other member by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

Proposed Amendment

Interpretation of this Division

196A. In this Division —

...

"securities" —

(a) in relation to a corporation, for the purposes of sections 196 (a) (i) and (b) (i), 198, 202 and 203, means —

(i) debentures, stocks or shares issued or proposed to be issued by a corporation;

(ii) any right, option or derivative in respect of any such debentures, stocks or shares; ~~or~~

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

(A) the value or price of any such debentures, stocks or shares;

(B) the value or price of any group of any such debentures, stocks or shares; ~~or~~

<u>Existing Provision</u>	<u>Proposed Amendment</u>
<p>(C) an index of any such debentures, stocks or shares; ←</p> <p>← but does not include —</p> <p>(AA) futures contracts;</p> <p>(BB) bills of exchange;</p> <p>(CC) promissory notes; or</p> <p>(DD) certificates of deposit issued by a bank or finance company; ←</p> <p>←</p> <p>(b) in relation to a business trust, for the purposes of sections 196 (a) (ia) and (b) (ia), 198, 202 and 203, means —</p> <p>(i) units in a business trust;</p> <p>(ii) derivatives of units in a business trust;</p> <p>(iii) debentures of a business trust; or</p> <p>(iv) any right, option or derivative in respect of any such debentures; ←</p>	<p>; <u>or</u></p> <p><u>(iv) such other product or class of products as the Authority may prescribe as a security.</u></p> <p><u>or</u></p> <p><u>(EE) such other product or class of products that would otherwise fall within subparagraphs (i) to (iii) as the Authority may prescribe as not being a security;</u></p> <p>; <u>or</u></p>

<u>Existing Provision</u>	<u>Proposed Amendment</u>
<p>but does not include —</p> <p>(A) futures contracts;</p> <p>(B) bills of exchange; or</p> <p>(C) promissory notes;</p> <p>and</p> <p>(c) in any other case, has the same meaning as in section 2.</p> <p>...</p>	<p>(v) <u>such other product or class of products as the Authority may prescribe as a security.</u></p> <p><u>or</u></p> <p>(D) <u>such other product or class of products that would otherwise fall within subparagraphs (i) to (iv) as the Authority may prescribe as not being a security; and</u></p>

Penalties under this Division

204. —(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

Existing Provision

~~(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 232 for the contravention.~~ ←

Penalties under this Division

212. —(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

~~(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 232 for the contravention.~~ ←

Interpretation of this Division

214. In this Division —

Proposed Amendment

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after –

(a) a court has made an order against him for the payment of a civil penalty under section 232; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5).

in respect of the contravention.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after –

(a) a court has made an order against him for the payment of a civil penalty under section 232; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5).

in respect of the contravention.

Existing Provision

Proposed Amendment

...

"securities" means —

(a) in relation to a corporation, for the purposes of sections 213 (a) (i) and (b) (i) and 218 —

(i) debentures, stocks or shares issued or proposed to be issued by a corporation;

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

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

(A) the value or price of any such debentures, stocks or shares;

(B) the value or price of any group of any such debentures, stocks or shares; or

(C) an index of any such debentures, stocks or shares; ~~or~~

(iv) a futures contract only if the commodity which is the subject of the futures contract is a share or stock of a corporation; ←

or

<u>Existing Provision</u>	<u>Proposed Amendment</u>
←	(v) such other product or class of products as the Authority may prescribe as a security,
←	but does not include such product or class of products that would otherwise fall within subparagraphs (i) to (iv) as the Authority may prescribe as not being a security,
<p>(b) in relation to a business trust, for the purposes of sections 213 (a) (ia) and (b) (ia) and 218 (1A) and (4A) —</p> <p>(i) units in a business trust;</p> <p>(ii) derivatives of units in a business trust;</p> <p>(iii) debentures of a business trust; or</p> <p>(iv) any right, option, derivative in respect of any such debentures; and ←</p> <p>←</p> <p>←</p>	
	or
	(v) such other product or class of products as the Authority may prescribe as a security,
	but does not include such product or class of products that would otherwise fall within subparagraphs (i) to (iv) as the Authority may prescribe as not being a security, and
<p>(c) in any other case —</p> <p>(i) debentures or stocks issued or proposed to</p>	

Existing Provision
be issued by a government;

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

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

(iv) any unit in a collective investment scheme;

(v) any unit, or derivative of a unit, in a business trust;

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

(A) the value or price of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust;

(B) the value or price of any group of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust; or

(C) an index of any such debentures, stocks, shares, units in a collective

Proposed Amendment

Existing Provision

investment scheme or units in a business trust; ~~or~~

Proposed Amendment

(vii) a futures contract only if the commodity which is the subject of the futures contract is a share or share index, or stock or stock index;

← or

(viii) such other product or class of products as the Authority may prescribe as a security.

← but does not include —

(AA) bills of exchange;

(BB) promissory notes; ~~or~~

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

← or

(DD) such other product or class of products that would otherwise fall within subparagraphs (i) to (vii) as the Authority may prescribe as not being a security;

Prohibited conduct by connected person in possession of inside information

218. —(1) Subject to this Division, where —

(a) a person who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation; and

Existing Provision

(b) the connected person knows or ought reasonably to know that —

- (i) the information is not generally available; and
- (ii) if it were generally available, it might have a material effect on the price or value of those securities of that corporation,
subsections (2), (3), (4), (5) and (6) shall apply.

[1/2005]

(1A) Subject to this Division, where —

(a) a person who is connected to any corporation, where such corporation —

- (i) in relation to a business trust, acts as its trustee or manages or operates the business trust; or
- (ii) in relation to a collective investment scheme that invests ~~only~~ in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any units of which are listed on a securities exchange, is the trustee or manager of the scheme,

primarily

possesses information concerning that corporation, business trust or scheme, as the case may be, that is not generally available but,

Proposed Amendment

Existing Provision

if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation, of securities of that business trust or of units in that scheme, as the case may be; and

(b) the connected person knows or ought reasonably to know that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities of that corporation, of those securities of that business trust or of those units in that scheme, as the case may be,
subsections (2), (3), (4A), (5) and (6) shall apply.

[1/2005]

(2) The connected person must not (whether as principal or agent)

—

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities referred to in subsection (1) or (1A), as the case may be; or

(b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities referred to in subsection (1) or (1A), as the case may be.

Proposed Amendment

Existing Provision

Proposed Amendment

[1/2005]

(3) Where trading in the securities referred to in subsection (1) or (1A) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the connected person must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the other person would or would be likely to —

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or

(b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

[1/2005]

(4) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation referred to in subsection (1), where the prosecution or plaintiff proves that the connected person was at the material time —

(a) in possession of information concerning the corporation to which he was connected; and

(b) the information was not generally available, it shall be presumed, until the contrary is proved, that the

Existing Provision

connected person knew at the material time that —

- (i) the information was not generally available; and
- (ii) if the information were generally available, it might have a material effect on the price or value of securities of that corporation.

[1/2005]

(4A) In any proceedings for a contravention of subsection (2) or
(3) against a person connected to a corporation which —

- (a) in relation to a business trust, acts as its trustee or manages or operates the business trust; or
- (b) in relation to a collective investment scheme, is the trustee or manager of the scheme,

as the case may be, referred to in subsection (1A), where the prosecution or plaintiff proves that the connected person was at the material time —

- (i) in possession of information concerning the corporation, business trust or scheme, as the case may be; and
- (ii) the information was not generally available, it shall be presumed, until the contrary is proved, that the connected person knew at the material time that

Proposed Amendment

Existing Provision

Proposed Amendment

(A) the information was not generally available;
and

(B) if the information were generally available, it
might have a material effect on the price or
value of securities of that corporation, of
securities of that business trust or of units in the
scheme, as the case may be.

[1/2005]

(5) In this Division —

(a) “connected person” means a person referred to in
subsection (1) or (1A) who is connected to a corporation; and

(b) a person is connected to a corporation if —

(i) he is an officer of that corporation or of a related
corporation;

(ii) he is a substantial shareholder ~~within the~~
~~meaning of Division 4 of Part IV of the Companies~~
~~Act (Cap. 50)~~ in that corporation or in a related
corporation; or

(iii) he occupies a position that may reasonably be
expected to give him access to information of a kind

[Deleted for conformity with amendments to Section 2]

Existing Provision

to which this section applies by virtue of —

(A) any professional or business relationship existing between himself (or his employer or a corporation of which he is an officer) and that corporation or a related corporation; or

(B) being an officer of a substantial shareholder ~~within the meaning of Division 4 of Part IV of the Companies Act~~ in that corporation or in a related corporation.

(6) In subsection (5), “officer”, in relation to a corporation, includes —

(a) a director, secretary or employee of the corporation;

(b) a receiver, or receiver and manager, of property of the corporation;

(c) a judicial manager of the corporation;

(d) a liquidator of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

Proposed Amendment

[Deleted for conformity with amendments to Section 2]

Existing Provision

Penalties under this Division

221. —(1) Any person who contravenes section 218 or 219 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

~~(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after a court has made an order against him for the payment of a civil penalty under section 232 for the contravention.~~

Proposed Amendment

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after -

(a) a court has made an order against him for the payment of a civil penalty under section 232; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5).

in respect of the contravention.

Existing Provision

Proposed Amendment

Disgorgement against third parties

232A. – (1) Where –

(a) a person has been convicted of an offence under this Part;

(b) a person 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; or

(c) the court is satisfied on a balance of probabilities that a contravention by a person of any of the provisions in this Part has taken place.

the court may, on the application of the Authority or any person who has suffered loss, make an order (referred to in this section as the order of disgorgement) against any other person who has benefited from a trade or trades conducted on behalf of the second-mentioned person (referred to in this section as the third party) by a person specified in paragraph (a), (b) or (c) in contravention of any of the provisions in this Part, that the third party shall disgorge the whole or part of the benefit.

Existing Provision

Proposed Amendment

(2) An application for an order of disgorgement under subsection (1) shall not be commenced after the expiration of 6 years from the date of the contravention of the relevant provision.

(3) Subject to subsection (4), the court shall not make an order of disgorgement against the third party if the third party satisfies the court, on a balance of probabilities, that –

(a) the third party acquired the benefit without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the benefit was derived from the contravention referred to in subsection (1); and

(b) the third party has acted on the benefit such that it has altered its position in reliance on it having an indefeasible interest in the benefit and that, in the opinion of the court, it would be inequitable to make an order of disgorgement.

(4) Nothing shall prevent the court from making an order of disgorgement under this section against the third party who, on a balance of probabilities, satisfied the court under subsection (3), for an amount that is, in the opinion of the court, equitable.

(5) A person who has suffered loss as a result of the trade or trades referred to in subsection (1) (referred to in this section as the claimant)

Existing Provision

Proposed Amendment

may lodge a claim for compensation out of the amount ordered to be disgorged by the court under that subsection.

(6) Where an order of disgorgement is not the subject of an appeal and not subject to further appeal, the Authority or any person who has suffered may apply to the Court for the court to fix a day (which shall not be less than 3 months from the date of the order) on or before which all claimants are to file and prove their claims for compensation.

(7) The court may, after expiry of the date fixed under subsection (6), make an order for the third party to pay to any person who has filed and proven its claim for compensation an amount —

(a) equal to the amount of compensation which that person 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, less any compensation received from the contravening person from an action under section 234 or 236 in respect of the same contravention; or

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

Existing Provision

Proposed Amendment

whichever is the lesser, and the court shall order the third party to pay to the Authority any amount remaining under the order of disgorgement.

(8) After the expiry of the date fixed under subsection (5), no person shall bring any action or claim against the third party for any compensation that he would have been entitled to arising out of the order of disgorgement referred to in subsection (1).

(9) For the purposes of this section, “benefit” means a profit gained or loss avoided.

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 ▼ a consent order made with or without admission of contravention under section 232 (4),

by way of a default judgement or

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

Existing Provision

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

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

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

(a) equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 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,

Proposed Amendment

less any compensation received under Section 232A

Existing Provision

Proposed Amendment

whichever is the lesser.

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

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

(b) the conviction is not subject to further appeal;

(c) no notice of appeal against the conviction is lodged within the time prescribed by section 247 of the Criminal Procedure Code (Cap. 68); or

(d) any appeal against the conviction is withdrawn.

(5) For the purposes of this section, an order imposing a civil penalty is made final if —

(a) the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;

(b) the order is not subject to further appeal;


Existing Provision

(c) no notice of appeal against the imposition of the penalty is lodged within the time prescribed by Rules of Court (Cap. 322, R 5) made under section 238; or

(d) any appeal against the imposition of the penalty is withdrawn.

Proposed Amendment


Jurisdiction of District Court

237. A District Court shall have jurisdiction to hear and determine any action under section 232,  234 or 236 regardless of the monetary amount.

232A.


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 sections 232,  234 and 236; and

232A

(b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

(2) Without prejudice to the generality of subsection (1), Rules of Court may, in relation to proceedings under section  236 —

232A or

Existing Provision

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



Proposed Amendment

New provision, immediately after section 238.

Attribution of liability to corporations

238A. – (1) Where a contravention of any provision of this Part committed by an employee or officer of a corporation for the benefit of the corporation, is proved to have been committed with the consent or connivance of the corporation, the corporation shall be guilty of the same offence and liable for the same contravention for the purposes of proceedings under Division 4 as the employee or officer, as the case may be, and shall be liable to be proceeded against and punished accordingly.

(2) Where a contravention of any provision of this Part committed by an employee or officer of a corporation for the benefit of the corporation, is attributable to any neglect on the part of the corporation, the corporation shall be liable for the same contravention for the purposes of proceedings under Division 4 as the employee or officer, as the case may be, and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of subsection (2), in determining whether a contravention is attributable to any neglect on the part of the corporation, the court shall take into account the following matters:

- (a) whether the corporation has established adequate policies and procedures for the purposes of preventing and detecting

Existing Provision

Proposed Amendment

market misconduct;

(b) whether the corporation has consistently enforced compliance with its policies and procedures referred to in paragraph (a); and

(c) such other factors as the court may consider relevant.

Attribution of liability to partnerships and limited liability partnerships

238B. – (1) Where a contravention of any provision of this Part committed by a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (referred to in this section as the contravening person) for the benefit of the partnership or limited liability partnership, as the case may be, is proved to have been committed with the consent or connivance of the partnership or limited liability partnership, as the case may be, the partnership or limited liability partnership shall be guilty of the same offence and liable for the same contravention for the purposes of proceedings under Division 4 as the contravening person, and shall be liable to be proceeded against and punished accordingly.

(2) Where a contravention of any provision of this Part committed by a contravening person of a partnership or limited liability partnership, as the case may be, for the benefit of the partnership or limited

Existing Provision

Proposed Amendment

liability partnership, as the case may be, is attributable to any neglect on the part of the partnership or limited liability partnership, as the case may be, the partnership or limited liability partnership shall be liable for the same contravention for the purposes of proceedings under Division 4 as the contravening person, and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of subsection (2), in determining whether a contravention is attributable to any neglect on the part of the partnership or limited liability partnership, as the case may be, the court shall take into account the following matters:

(a) whether the partnership or limited liability partnership, as the case may be, has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;

(b) whether the partnership or limited liability partnership, as the case may be, has consistently enforced compliance with its policies and procedures; and

(c) such other factors as the court may consider relevant.

Part XIII

Offers of Investments

Preliminary Provision

239. —(1) In this Division —

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

~~"chief executive officer", in relation to a corporation, means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;~~

...

~~"securities" means debentures or units of debentures of an entity, or shares or units of shares of a corporation;~~

securities" means —

(a) shares or units of shares of a corporation;

(b) debentures or units of debentures of an entity;

(c) interests in a limited partnership or limited liability partnership; or

(d) such other products or class of products as the Authority may prescribe as securities;

but does not include such product or class of products that would otherwise fall within paragraphs (a) to (c) as the Authority may prescribe as not being a security.

Obligations of borrowing corporation

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 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 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 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

(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 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 or equivalent persons 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 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) —~~

~~(a) need not be audited; or~~

~~(b) the audit thereof may be of a limited nature or extent,~~

~~if the trustee for the holders of the debentures of the borrowing 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.

(10) Notwithstanding anything in subsection (8), 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 —

(a) subsection (6)(a) need not be audited; and

(b) subsection (6)(b) —

(i) need not be audited; or

(ii) 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.

(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 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.

Small offers

272A. —(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to personal offers of securities of an entity by a person if —

(a) the total amount raised by the person from such offers within any period of 12 months does not exceed —

(i) \$5 million (or its equivalent in a foreign currency);
or

(ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);

(b) in respect of each offer, the person making the offer gives the person to whom he makes the offer —

(i) the following statement in writing:

“This offer is made in reliance on the exemption under section 272A (1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore”; and

(ii) a notification in writing that the securities to which the offer (referred to in this sub-paragraph as the initial offer) relates shall not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivisions (2) and (3) of this Division;

(B) in reliance on subsection (8) (c) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the securities were acquired under the initial offer, in reliance on the exemption under this subsection;

(c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

(d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities; or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing-

; and

(e) no prospectus in respect of the securities being offered has been registered by the Authority or, where a prospectus has previously been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

(2) For the purposes of subsection (1) (b) where any notice

circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of securities is one that —

(a) may be accepted only by the person to whom it is made; and

(b) is made to a person who is likely to be interested in that offer, having regard to —

(i) any previous contact before the date of the offer between the person making the offer and that person;

(ii) any previous professional or other connection established before that date between the person making the offer and that person; or

(iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —

- (A) the person making the offer;
- (B) the holder of a capital markets services licence to deal in securities;
- (C) an exempt person in respect of dealing in securities;
- (D) a person licensed under the Financial Advisers Act (Cap.110) in respect of the provision of financial advisory services concerning investment products;
- (E) an exempt financial adviser as defined in section 2 (1) of the Financial Advisers Act; or
- (F) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind.

(4) In determining the amount raised by an offer, the following shall be included:

(a) the amount payable for the securities at the time they are allotted, issued or sold;

(b) if the securities are issued partly-paid, any amount payable at a future time if a call is made;

(c) if the securities carry a right (by whatever name called) to be converted into other securities or to acquire other securities, any amount payable on the exercise of the right to convert them into, or to acquire, other securities.

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1) (a), each amount raised —

(a) by that person from any offer of securities issued by the same entity; or

(b) by that person or another person from any offer of securities of an entity, units or derivatives of units in a business trust, or units in a collective investment scheme, which is a closely related offer,

if any, within that period in reliance on the exemption under

subsection (1), section 282V (1) or section 302B (1) shall be included.

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of securities made by a person acting as an agent of another person shall be treated as an offer made by that other person.

(8) Where securities acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the securities to another person, Subdivisions (2) and (3) of this Division shall apply to the offer from the first-mentioned person to the second-mentioned person which resulted in that sale, unless —

(a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);

(b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the securities were acquired under the initial offer; or

(c) such offer is one —

(i) that may be accepted only by the person to whom it is made;

(ii) that is made to a person who is likely to be interested in the offer having regard to —

(A) any previous contact before the date of the offer between the person making the initial offer and that person;

(B) any previous professional or other connection established before that date between the person making the initial offer and that person; or

(C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —

(CA) the person making the initial offer;

(CB) the holder of a capital markets services licence to deal in securities;

(CC) an exempt person in respect of dealing in securities;

(CD) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;

(CE) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act; or

(CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind;

(iii) in respect of which the first-mentioned person has given the second-mentioned person —

(A) the following statement in writing:

“This offer is made in reliance on the exemption under section 272A(8) (c) of the Securities and Futures Act. It is not made in or accompanied by

a prospectus that is registered by the Monetary Authority of Singapore.”; and

(B) a notification in writing that the securities being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the securities were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or

professional services, or by way of commission or fee for services rendered by —

(A) the holder of a capital markets services licence to deal in securities;

(B) an exempt person in respect of dealing in securities; or

(C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8) (c) (iii).

(10) In subsection (1) (c) and (8) (c) (iv), “advertisement” means

—

(a) a written or printed communication;

(b) a communication by radio, television or other medium of

communication; or

(c) a communication by means of a recorded telephone message,

that is published in connection with an offer of securities, but does not include —

(i) a document —

(A) purporting to describe the securities being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity; and

(B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the securities being offered;

(ii) a publication which 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 recognised securities exchange, which is made by any person; or

(iii) a publication which 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.

(11) In subsection (10) (i) (A), the reference to the affairs of the person making the offer, the issuer or, where applicable, the underlying entity shall —

(a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2 (2); and

(b) in any other case, be construed as referring to such matters as may be prescribed by the Authority.

Private placement

272B. —(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to offers of securities of an entity that are made by a person if —

(a) the offers are made to no more than 50 persons within any period of 12 months;

(b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

(c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities;
or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing; ← ; and

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1) (a).

(3) In determining whether offers of securities by a person are made to no more than the applicable number of persons specified in subsection (1) (a) within a period of 12 months, each person to whom —

(a) an offer of securities issued by the same entity is made by the first-mentioned person; or

(b) an offer of securities of an entity, units or derivatives of units in a business trust, or units in a collective investment scheme, is made by the first-mentioned person or another person where such offer is a closely related offer,

(d) no prospectus in respect of the securities being offered has been registered by the Authority or, where a prospectus has previously been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance to the exemption on this subsection.

if any, within that period in reliance on the exemption under this section, section 282W or section 302C shall be included.

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

(a) an offer of securities to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the securities which are the subject of the offer;

(b) an offer of securities to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the securities which are the subject of the offer;

(c) an offer of securities to 2 or more persons who will own the securities acquired as joint owners shall be treated as an offer to a single person;

(d) an offer of securities to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;

(e) offers of securities made by a person as an agent of another person shall be treated as offers made by that other person;

(f) where an offer is made to a person with a view to another person acquiring an interest in those securities by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons specified in subsection (1) (a); and

(g) where —

(i) an offer of securities is made to a person in reliance on the exemption under subsection (1) with a view to those securities being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 280,

both persons shall be counted for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons specified in subsection (1) (a).

(6) In subsection (1) (b), “advertisement” has the same meaning as in section 272A (10).

Offer made under certain circumstances

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

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

(b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

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

(c) it is made in connection with a proposed compromise or arrangement between —

(i) an unlisted corporation and its creditors or a class of them; or

(ii) an unlisted corporation and its members or a class of them,

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

corporation was incorporated;

(ca) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some or all of the shares of a particular class in a corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code is applicable to it;

(cb) it is made in connection with a proposed compromise or arrangement between —

(i) a corporation and its creditors or a class of them;
or

(ii) a corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code is applicable to it;

(cc) it is an offer to enter into an underwriting agreement relating to securities;

(cd) it is an offer of securities of an entity —

(i) being an entity which is formed or constituted in Singapore or otherwise, whose securities are not listed for quotation on a securities exchange; or

(ii) being an entity which is not formed or constituted in Singapore, whose securities are listed for quotation on a securities exchange and such listing is not a primary listing,

that is made to existing members or debenture holders of that entity (whether or not it is renounceable in favour of persons other than existing members or debenture holders);

(ce) it is an offer of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on a securities exchange;

(cf) it is an offer of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed for quotation on a securities exchange;

(cg) it is an offer of units of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on a securities exchange, where such units may only be exercised or converted by any existing member or debenture holder into shares or debentures, as the case may be, of the entity;

(ch) it is an offer of units of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed on a securities exchange, where such units may only be exercised or converted by any existing debenture holder into debentures of the entity;

(ci) it is an offer of securities of a corporation made in the circumstances specified under section 306 of the Companies Act (Cap. 50);

~~(d) it is an offer of shares or debentures that have been previously issued and are listed for quotation or quoted on a securities exchange;~~

(d) it is an offer of shares or debentures (not being such excluded shares or excluded debentures as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted and are traded on a securities exchange;

(e) it is an offer of units of shares or debentures where — (not being such units of excluded shares or excluded debentures as may be prescribed by the Authority)

~~(i) the units of shares or debentures have been previously issued and are listed for quotation or quoted on a securities exchange; or~~

(i) the units of shares or debentures (not being such excluded units of shares or debentures as may be prescribed by the Authority) have been previously issued, are listed for quotation or quoted and are traded on a securities exchange; or

(ii) an application has been or will be made for permission for the units of shares or debentures to be listed for quotation or quoted on a securities exchange and the shares or debentures have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange; or

(f) it is made (whether or not in relation to securities that have been previously issued) by an entity to a qualifying person, where the securities are to be held by or for the benefit of the qualifying person and are the securities of the entity or any of its related parties.

(1A) An offer of securities does not come within subsection (1) (d) or (e) if —

(a) the securities being offered are borrowed by the issuer from an existing shareholder, holder of a debenture, or holder of units of shares or debentures solely for the purpose of

facilitating the offer of securities by the issuer; and

(b) such borrowing is made under an agreement or arrangement between the issuer and the shareholder or holder which promises the issue or allotment of securities by the issuer to the shareholder or holder at the same time or shortly after the offer.

(2) An offer of securities comes within subsection (1) (f) only if no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(a) the holder of a capital markets services licence to deal in securities;

(b) an exempt person in respect of dealing in securities; or

(c) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

(3) *Deleted by Act 1/2005, wef 15/10/2005.*

(4) For the purposes of subsection (1) (f), a person is a qualifying person in relation to an entity if he is a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the entity or a related corporation of that entity (being a corporation), or if he is the spouse, widow, widower or a child, adopted child or step-child below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee

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

(a) the cost of providing a prospectus for an offer of securities outweighs the resulting protection to investors; or

(b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer of securities,

then Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to such an offer for a period of 6 months from the date of the declaration.

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

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

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

(9) In subsection (1) (b) and (c), “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 to accredited investors and certain other persons

275. —(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, whether or not they have been previously issued, where the offer is made to a relevant person, if —

(a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

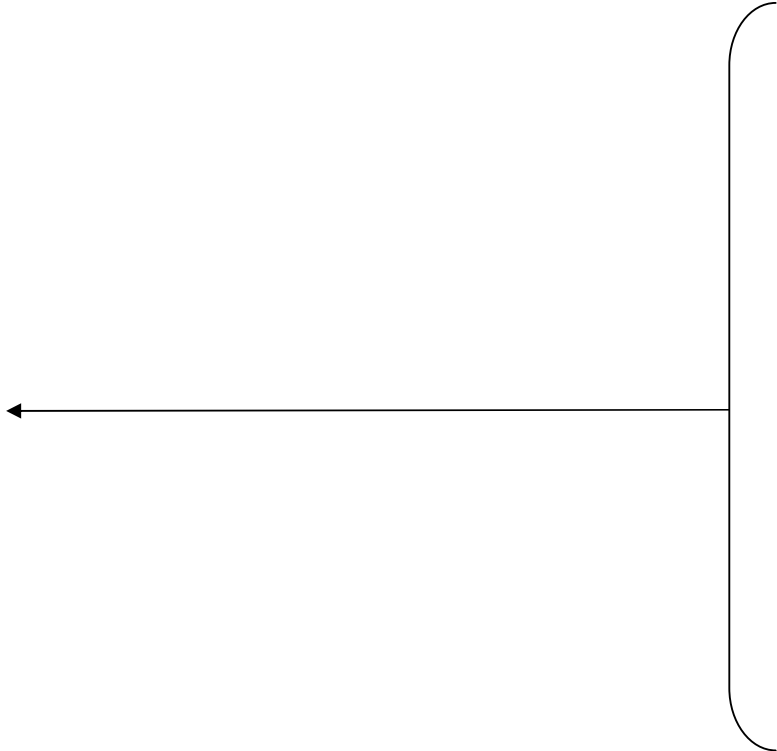
(b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities; or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing- ←

; and



(c) no prospectus in respect of the securities being offered has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

(1A) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities to a person who acquires the securities as principal, whether or not the securities have been previously issued, if —

(a) the offer is on terms that the securities may ~~only be~~ acquired at a consideration of not less than ~~\$200,000~~ (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

100,000

(b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

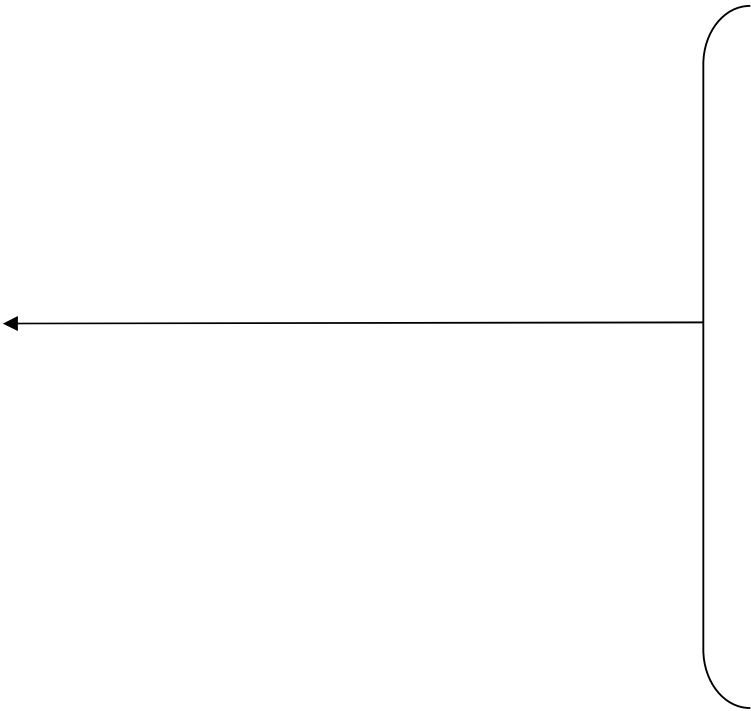
(c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities; or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing;

; and



(d) no prospectus in respect of the securities being offered has been registered by the Authority or, where a prospectus has previously been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

(2) In this section —

"advertisement" means —

(a) a written or printed communication;

(b) a communication by radio, television or other medium of communication; or

(c) a communication by means of a recorded telephone message,

that is published in connection with an offer in respect of securities, but does not include —

(i) an information memorandum;

(ii) a publication which 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 recognised securities exchange, which is made by any person; or

(iii) a publication which 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;

"information memorandum" means a document —

(a) purporting to describe the securities being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity; and

(b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (1A) is to be made so as to assist them in making an investment decision in respect of the securities being offered;

"relevant person" means —

(a) an accredited investor;

(b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;

(c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;

(d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

(e) a spouse, parent, brother, sister, son or daughter of the

person making the offer (such person being an individual).

(2A) In the definition of “information memorandum” in subsection (2), the reference to the affairs of the person making the offer, the issuer or, where applicable, the underlying entity shall —

(a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and

(b) in any other case, be construed as referring to such matters as may be prescribed by the Authority.

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

(4) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (1A) (a) in subsection (2).

Offer of securities acquired pursuant to section 274 or 275

Subject to subsection (7) and notwithstanding

276. —(1) ~~Notwithstanding~~ sections 272A, 272B, 273 (1) (d), (e) and (f), 277, 278 and 279, where securities initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold within the period of 6 months from the date of the initial acquisition to any person other than —

(a) an institutional investor;

(b) a relevant person as defined in section 275 (2); or

(c) any person pursuant to an offer referred to in section 275 (1A),

then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale.

(2) Where securities initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold to —

(a) an institutional investor;

(b) a relevant person as defined in section 275 (2); or

(c) any person pursuant to an offer referred to in section 275 (1A),

Subdivisions (2) and (3) of this Division shall not apply to the offer resulting in that sale.

Subject to subsection (7), securities

(3) ~~Securities~~ of a corporation (other than a corporation that is an accredited investor) —

(a) the sole business of which is to hold investments; and

(b) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any securities pursuant to an offer made in reliance on an exemption under section 275 unless —

(i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 275 (2); or

(B) arises from an offer referred to in section 275 (1A);

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

Subject to subsection (7), where

(4) ~~Where~~ —

(a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and

(b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust shall not be transferred within 6 months after securities are acquired for the trust pursuant to an offer made in reliance on an exemption under section 275 unless —

(i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 275 (2); or

(B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

(5) For the avoidance of doubt, the reference to beneficiaries in subsection (4) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

(6) For the avoidance of doubt, where any securities are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275, an offer to sell those securities may be made in reliance on an exemption under section 273 (1) (d) or (e) after 6 months have elapsed from the date of the first-mentioned offer.

(7) Subsections (1), (3) and (4) shall not apply in relation to an offer of restricted securities of a corporation where —

(a) an offer of securities in the corporation has been made in or accompanied by a prospectus and these securities are listed for quotation on a securities exchange; and

(b) the restricted securities are of the same class or can be converted into securities of the same class as the securities referred to in paragraph (a).

(8) In subsection (7), “restricted securities” means securities of a corporation that are previously acquired pursuant to an offer made in reliance on an exemption under section 274 or 275.

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 —

subsections (1A) and (1B)

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

(1A) Subsection (1) shall apply to an offer of securities referred to therein only for a period of 6 months from the date of lodgment of the offer information statement relating to that offer.

(1B) For the avoidance of doubt, section 251 shall not apply to an offer of securities to be made in reliance on the exemption under subsection (1).

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

(3) Sections 249, 249A, 253, 254 and 255 shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

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

(a) a reference in section 249 or 249A to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and

(b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 shall be read as a reference to any information prescribed under subsection (1) (b).

(5) Where the written consent of an expert is required to be given under section 249 (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.

(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.

Preliminary Provisions

282A. —(1) In this Division, unless the context otherwise requires

~~"chief executive officer", in relation to a corporation, means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;~~

...

~~"trustee manager"—~~

~~(a) in relation to a registered business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A); and~~

~~(b) in relation to a business trust for which an application for registration has been made under section 4 (1) of the Business Trusts Act, means the person proposed to be named as the trustee manager in the application made under that~~

section;

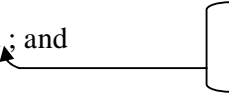
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Requirement for prospectus and profile statement, where relevant

282C. —(1) No person shall make an offer of units or derivatives of units in a business trust unless —

(a) the business trust is a registered business trust; and

or recognised business trust



(b) the offer —

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

(A) that is prepared in accordance with section 282F;

(B) a copy of which, being one that has been signed in accordance with subsection (5), is lodged with the Authority; and

(C) that is registered by the Authority; and

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

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

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

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

(a) a prospectus in respect of such offer is prepared in accordance with section 282F, and the profile statement is prepared in accordance with section 282G;

(b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (5), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;

(c) the prospectus and profile statement are registered by the

Authority;

(d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and

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

(5) The copy of a prospectus or profile statement lodged with the Authority shall be signed —

(a) where the person making the offer is the issuer, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer;

(b) where the person making the offer is an individual and is not the issuer —

(i) by that person; and

(ii) if the issuer is controlled by that person, one or more of his related parties, or that person and one or more of his related parties, by every director or equivalent person of the issuer and every person who

is named therein as a proposed director or an equivalent person of the issuer; and

(c) where the person making the offer is an entity and is not the issuer —

(i) by every director or equivalent person of that entity; and

(ii) if the issuer is controlled by that entity, one or more of its related parties, or that entity and one or more of its related parties, by every director or equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer.

(6) A requirement under subsection (5) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(a) by that director or equivalent person; or

(b) by a person who is authorised in writing by that director, or equivalent person to sign on his behalf.

(7) A requirement under subsection (5) for the copy of a

prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(a) by that proposed director or equivalent person; or

(b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his behalf.

(8) No person shall make any offer of units or derivatives of units in a business trust that has not been formed or does not exist.

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

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

(a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (20);

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

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (20);

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

(i) register the prospectus or profile statement; or

(ii) give the person making the offer a notice of an opportunity to be heard under subsection (20); or

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

(11) Where, after a notice of an opportunity to be heard has been given under subsection (10) (a), (b) (ii) or (c) (ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date shall not be earlier than the 14th day from the date of lodgment of the prospectus or profile statement with the Authority.

(12) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (5) and which contains the information required to be stipulated in the prospectus under section 282F, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.

(13) A person making an offer of units or derivatives of units in a business trust may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before but not after the registration of the prospectus or profile statement by the Authority.

(14) Subject to subsection (15) —

(a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be deemed, for the purposes of subsection (10), to have been

lodged when such amendment was lodged; and

(b) where any amendment to a profile statement is lodged, the profile statement shall be deemed, for the purposes of subsection (10), to have been lodged when such amendment was lodged.

(15) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended shall be deemed, for the purposes of subsection (10), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

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

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

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

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

and, for the purposes of this subsection, the person making the

offer shall provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation, in such form or medium for publication as the Authority may require.

(18) The Authority shall refuse to register a prospectus if —

(a) the Authority is of the opinion that the prospectus contains a false or misleading statement;

(b) there is an omission from the prospectus of any information that is required to be included in it under section 282F;

(c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (5);

(d) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;

(e) any written consent of an expert to the issue of the prospectus required under section 282I, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(f) any written consent of an issue manager to the issue of the prospectus required under section 282J (1), or a copy thereof

which is verified as prescribed, is not lodged with the Authority;

(g) any written consent of an underwriter to the issue of the prospectus required under section 282J (2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or

(h) the Authority is of the opinion that it is not in the public interest to do so.

(19) The Authority shall refuse to register a profile statement if

(a) the Authority is of the opinion that the profile statement contains a false or misleading statement;

(b) there is an omission from the profile statement of information required under section 282G to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;

(c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (5);

(d) any written consent of an expert to the issue of the profile

statement required under section 282I, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

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

(f) the prospectus has not been registered by the Authority;

(g) any written consent of an issue manager to the issue of the profile statement required under section 282J (1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(h) any written consent of an underwriter to the issue of the profile statement required under section 282J (2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or

(i) the Authority is of the opinion that it is not in the public interest to do so.

(20) The Authority shall not refuse to register a prospectus under subsection (18) or a profile statement under subsection (19) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to

register the prospectus or profile statement on the basis of any of the following circumstances:

(a) the person making the offer (being an entity), the issuer, the trustee-manager of the business trust or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

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

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

(21) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (18) or (19), appeal to the Minister whose decision shall be final.

(22) If —

(a) a prospectus or profile statement is issued, circulated or

distributed before it has been registered by the Authority; or

(b) an application to subscribe for or purchase units or derivatives of units in a business trust is accepted, or units or derivatives of units in a business trust are allotted, issued or sold, before a prospectus and, where applicable, profile statement, where applicable, in respect of the units or derivatives of units has been registered by the Authority,

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

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

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

(iii) the allotment, issue or sale of the units or derivatives of units,

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

(23) 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.

(24) For the purposes of subsections (18) (a) and (19) (a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

New provision, immediately after section 282T

Subdivision (2A) — Recognised business trusts

Power of Authority to recognise business trusts constituted outside Singapore

282TA.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2), recognise a business trust constituted outside Singapore.

(2) The Authority may recognise a business trust constituted outside Singapore under subsection (1) if and only if the Authority is satisfied that —

(a) the laws and practices of the jurisdictions under which the business trust is constituted and regulated affords to investors in

Singapore protection at least equivalent to that provided to them under the Business Trusts Act (Cap. 31A) in the case of registered business trusts;

(b) the business trust complies with, and satisfies, such criteria as may be prescribed by the Authority for the purposes of the Authority making the decision whether to grant the recognition; and

(c) the person making the offer, the issuer or the trustee-manager of the business trust complies with, and satisfies, such criteria as may be prescribed by the Authority for the purposes of the Authority making the decision whether to grant the recognition.

(3) Without prejudice to subsection (2), in considering whether to recognise a business trust under subsection (1), the Authority may have regard to such other factors as may be prescribed.

(4) The Authority may refuse to recognise any business trust constituted outside Singapore under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to recognise a business trust constituted outside Singapore under subsection (1) without giving the person who made the application an opportunity to be heard, except

that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the business trust on the basis of any of the following circumstances:

(a) the person making the offer (being an entity), the issuer, the trustee-manager or the business trust itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

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

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

(6) Any person making an application under subsection (1) may, within 30 days after he is notified that the Authority has refused to recognise that business trust constituted outside Singapore under subsection (1), appeal to the Minister whose decision shall be final.

(7) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner

as it considers appropriate, particulars of any business trust constituted outside Singapore that is recognised under subsection (1).

(9) The person making the offer, the issuer or the trustee-manager of a business trust constituted outside Singapore which is recognised under subsection (1), as the case may be, shall ensure that the criteria prescribed by the Authority in accordance with subsection (2) which are applicable to each of the mentioned persons shall continue to be satisfied.

(10) The trustee-manager of a business trust constituted outside Singapore which is recognised under subsection (1) shall furnish such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.

(11) Any person who contravenes subsection (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to impose conditions or restrictions

282TB.—(1) The Authority may recognise a business trust constituted outside Singapore under section 282TA(1) subject to such conditions or restrictions as it thinks fit to impose and the recognised business trust, the trustee-manager of the recognised business trust, the person making the offer or the issuer shall comply with such conditions or restrictions applicable to it as may be imposed by the Authority.

(2) The Authority may, at any time, by notice in writing to the trustee-manager of the recognised business trust, the person making the offer or the issuer, as the case may be, vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

(3) Any person who contravenes any condition or restriction applicable to him as may be imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Revocation, suspension or withdrawal of recognition

282TC.—(1) The Authority may revoke the recognition of a recognised business trust constituted outside Singapore granted under section 282TA(1) if —

(a) the application for recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the recognition;

(b) the Authority is of the opinion that the continued recognition of the business trust is or will be against the public interest;

(c) the Authority is of the opinion that the continued recognition of the business trust is or will be prejudicial to its unitholders or potential unitholders; or

(d) person making the offer, the issuer, the trustee-manager of the recognised business trust or the recognised business trust itself fails to comply with section 282TA(9) or (10) or 282TB.

(2) Where the Authority revokes the recognition of a recognised business trust constituted outside Singapore under subsection (1), the Authority may issue such directions as it deems fit to the person making the offer, the issuer or the trustee-manager of that recognised business trust including a direction that it allows the unitholders, on such terms as the Authority may approve, to obtain compensation for any loss or damage suffered as a result of the revocation; and the person making the offer, the issuer or the trustee-manager, as the case may be, shall comply with any such directions.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider —

(a) whether the trustee-manager of the recognised business trust is able to liquidate the property of the recognised business trust without material adverse financial effect to the unitholders, and

for this purpose, the factors which the Authority may take into account include —

(i) the liquidity of the property of the recognised business trust;

(ii) the penalties, if any, payable for liquidating the property;

(iii) in the case where the units of the recognised business trust are also listed for quotation or quoted on an overseas securities exchange, the potential impact on unitholders in the overseas jurisdiction; and

(b) where the units of the recognised business trust are listed for quotation on the official list of a securities exchange, whether a reasonable exit alternative has been offered to unitholders pursuant to the listing rules of the securities exchange.

(4) A person who contravenes any of the directions issued by the Authority to him under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

(5) Notwithstanding subsection (1), the Authority may, if it considers

it desirable to do so, instead of revoking the recognition of a recognised business trust, suspend the recognition of that recognised business trust for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the recognition of a recognised business trust under subsection (1) or suspends the recognition of a recognised business trust under subsection (5), it shall notify the person who made the application to the Authority for the recognition of that business trust under section 282TA(1).

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the person who made the application to the Authority for recognition of a business trust under section 282TA(1) in such form and manner as may be prescribed, withdraw the recognition of that recognised business trust.

(8) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (7) where the Authority is of the opinion that —

(a) there is any matter concerning the recognised business trust which should be investigated before the recognition is withdrawn; or

(b) the withdrawal of the recognition would not be in the public interest.

(9) The Authority shall not —

(a) revoke the recognition of a recognised business trust under subsection (1);

(b) suspend the recognition of a recognised business trust under subsection (5); or

(c) refuse the withdrawal of the recognition of a recognised business trust under subsection (8).

without giving the person referred to in subsection (6) or (7), as the case may be, an opportunity to be heard, except that an opportunity to be heard need not be given if the revocation or suspension is on the ground that the continued recognition of the recognised business trust is against the public interest on the basis of any of the following circumstances:

(a) the person making the offer (being an entity), the issuer, the trustee-manager of the recognised business trust or the recognised business trust itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

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

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

(10) The person referred to in subsection (6) or (7), as the case may be, may, within 30 days after he is notified by the Authority —

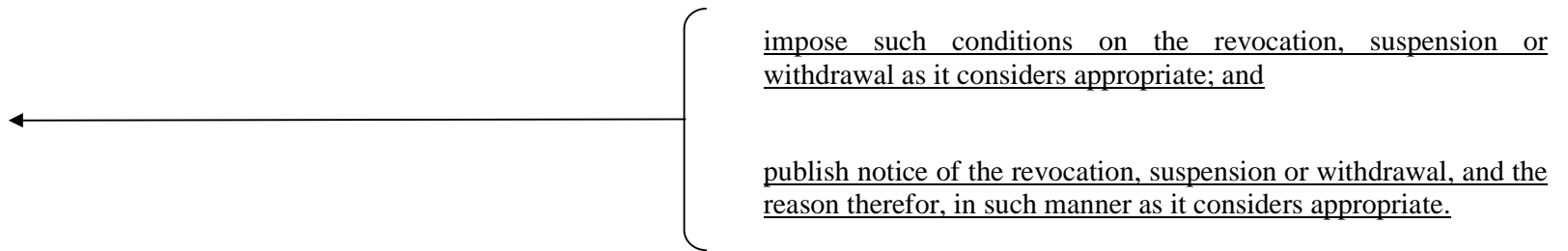
(a) has revoked the recognition of that recognised business trust under subsection (1);

(b) has suspended the recognition of that recognised business trust under subsection (5); or

(c) has refused to withdraw the recognition of that recognised business trust under subsection (8),

appeal to the Minister whose decision shall be final.

(11) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (5) or withdraws a recognition under subsection (8), it may —



Small offers

282V. —(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to personal offers of units or derivatives of units in a business trust by a person if —

(a) the total amount raised by the person from such offers within any period of 12 months does not exceed —

(i) \$5 million (or its equivalent in a foreign currency);
or

(ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);

(b) in respect of each offer, the person making the offer —

(i) gives the person to whom he makes the offer —

(A) in the case where the business trust is not registered under the Business Trusts Act 2004 (Act 30 of 2004), the following statement in writing:

“This offer is made in reliance on the exemption under section 282V (1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act 2004”; and

(B) in the case where the business trust is registered under the Business Trusts Act 2004, the following statement in writing:

“This offer is made in reliance on the exemption under section 282V(1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore”; and

(ii) gives the person to whom he makes the offer a notification in writing that the units or derivatives of units to which the offer (referred to in this subparagraph as the initial offer) relates being offered shall not be subsequently sold to any person, unless

the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivision (2) of this Division;

(B) in reliance on subsection (8) (c) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer, in reliance on the exemption under this subsection;

(c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

(d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities; or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing;

; and

(e) no prospectus in respect of the units or derivatives of units being offered has been registered by the Authority or, where a prospectus has previously been registered —

(i) the prospectus has expired pursuant to section 282K; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

(2) For the purposes of subsection (1) (*b*), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of units or derivatives of units in a business trust is one that —

(a) may be accepted only by the person to whom it is made;
and

(b) is made to a person who is likely to be interested in that offer, having regard to —

(i) any previous contact before the date of the offer between the person making the offer and that person;

(ii) any previous professional or other connection established before that date between the person making the offer and that person; or

(iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —

(A) the person making the offer;

(B) the holder of a capital markets services licence to deal in securities;

(C) an exempt person in respect of dealing in securities;

(D) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;

(E) an exempt financial adviser as defined in section 2 (1) of the Financial Advisers Act; or

(F) a person who is licensed, approved, authorized or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or

the provision of such services,

that he is interested in offers of that kind.

(4) In determining the amount raised by an offer, the following shall be included:

(a) the amount payable for the units or derivatives of units in a business trust at the time they are allotted, issued or sold;

(b) if the units or derivatives of units in a business trust are issued partly-paid, any amount payable at a future time if a call is made;

(c) if the units or derivatives of units in a business trust carry a right (by whatever name called) to be converted into other units or derivatives of units in the business trust or to acquire other units or derivatives of units in the business trust, any amount payable on the exercise of the right to convert them into, or to acquire, other units or derivatives of units.

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1) (a), each amount raised —

(a) by that person from any offer of units or derivatives of

units in a business trust issued by the same entity; or

(b) by that person or another person from any offer of securities which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), section 272A (1) or section 302B (1) shall be included.

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of units or derivatives of units in a business trust made by a person acting as an agent of another person shall be treated as an offer made by that other person.

(8) Where units or derivatives of units in a business trust acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the units or derivatives of units to another person, Subdivision (2) of this Division shall apply to the offer from the first-mentioned person to the second-mentioned person which resulted in that sale, unless —

(a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);

(b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer; or

(c) such offer is one —

(i) that may be accepted only by the person to whom it is made;

(ii) that is made to a person who is likely to be interested in the offer having regard to —

(A) any previous contact before the date of the offer between the person making the initial offer and that person;

(B) any previous professional or other connection established before that date between the person making the initial offer and that person; or

(C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —

(CA) the person making the initial offer;

(CB) the holder of a capital markets services licence to deal in securities;

(CC) an exempt person in respect of dealing in securities;

(CD) a person licensed under the Financial Advisers Act (Cap.110) in respect of the provision of financial advisory services concerning investment products;

(CE) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act; or

(CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or providing financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind;

(iii) in respect of which the first-mentioned person has given the second-mentioned person —

(A) the following statement in writing —

(AA) in the case where the business trust is not registered under the Business Trusts Act 2004 (Act 30 of 2004), in the following terms:

This offer is made in reliance on the exemption under section 282V (8) (c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act 2004.

(AB) in the case where the business trust is registered under the Business Trusts Act 2004, in the following terms:

This offer is made in reliance on the exemption under section 282V (8) (c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.

(B) a notification in writing that the units or

derivatives of units being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivision (2) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(A) the holder of a capital markets services

licence to deal in securities;

(B) an exempt person in respect of dealing in securities; or

(C) a person who is licensed, approved, authorized or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8) (c) (iii).

(10) In subsection (1) (c) and (8) (c) (iv), “advertisement” means

(a) a written or printed communication;

(b) a communication by radio, television or other medium of communication; or

(c) a communication by means of a recorded telephone message,

that is published in connection with an offer of units or derivatives of units in a business trust, but does not include

—

(i) a document —

(A) purporting to describe the units or derivatives of units being offered, or the business and affairs of the person making the offer, the issuer, the trustee of the business trust or the business trust; and

(B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units or derivatives of units being offered;

(ii) a publication which 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 recognised securities exchange, which is made by any person; or

(iii) a publication which consists solely of a notice or report of a general meeting or proposed general

meeting of the person making the offer, the issuer, the trustee of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting.

(11) In subsection (10) (i) (A), the reference to the affairs of the person making the offer, the issuer, the trustee of the business trust or the business trust shall —

(a) in the case where the person making the offer, the issuer or the trustee of the business trust is a corporation, be construed as including a reference to the matters referred to in section 2 (2);

(b) in the case where the person making the offer, the issuer or the trustee of the business trust is not a corporation, be construed as referring to such matters as may be prescribed by the Authority; and

(c) in the case of the business trust, be construed as referring to such matters as may be prescribed by the Authority.

Private placement

282W. —(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to offers of units or derivatives of units in a business trust that are made by a person if —

(a) the offers are made to no more than 50 persons within any period of 12 months;


(b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

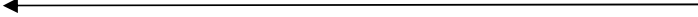
(c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities; or

(iii) a person who is licensed, approved, authorized or otherwise regulated under the laws, codes or other

requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing-  ; and

 (2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1) (a).

(3) In determining whether offers of units or derivatives of units in a business trust by a person are made to no more than the applicable number of persons specified in subsection (1) (a) within a period of 12 months, each person to whom —

(a) an offer of units or derivatives of units issued by the same entity is made by the first-mentioned person; and

(b) an offer of securities is made by the first-mentioned person or another person where such offer is a closely related offer,

if any, within that period in reliance on the exemption under this section, section 272B (1) or section 302C (1) shall be included.

(d) no prospectus in respect of the units or derivatives of units being offered has been registered by the Authority or, where a prospectus has been previously registered —

(i) the prospectus has expired pursuant to section 282K; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

(a) an offer of units or derivatives of units in a business trust to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units or derivatives of units which are the subject of the offer;

(b) an offer of units or derivatives of units in a business trust to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the units or derivatives of units which are the subject of the offer;

(c) an offer of units or derivatives of units in a business trust to 2 or more persons who will own the units or derivatives of units acquired as joint owners shall be treated as an offer to a single person;

(d) an offer of units or derivatives of units in a business trust

to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;

(e) offers of units or derivatives of units in a business trust made by a person as an agent of another person shall be treated as offers made by that other person;

(f) where an offer is made to a person with a view to another person acquiring an interest in those units or derivatives of units in a business trust by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the units or derivatives of units are made to no more than the applicable number of persons specified in subsection (1) (a); and

(g) where —

(i) an offer of units or derivatives of units in a business trust is made to a person in reliance on the exemption under subsection (1) with a view to those units or derivatives of units being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under

any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 282ZC,

both persons shall be included for the purposes of determining whether offers of the units or derivatives of units are made to no more than the applicable number of persons specified in subsection (1) (a).

(6) In subsection (1) (b), “advertisement” has the same meaning as in section 282V (10).

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;

(b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some or all of the shares of a particular class in a corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code were applicable to it;

(c) it is made in connection with a proposed compromise or arrangement between —

(i) a corporation and its creditors or a class of them;
or

(ii) a corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code were applicable to it;

~~(d) it is an offer of units in a business trust that have been previously issued and are listed for quotation or quoted on a securities exchange;~~

(d) it is an offer of units in a business trust (not being such excluded units as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted and are traded on a securities exchange;

(e) it is an offer of derivatives of units in a business trust where —

(not being such derivatives of excluded units as may be prescribed by the Authority)

~~(i) the derivatives of units have been previously issued and are listed for quotation or quoted on a securities exchange; or~~

(i) the derivatives of units (not being such excluded derivatives of units as may be prescribed by the Authority) have been previously issued, are listed for quotation or quoted, and are traded on a securities exchange; or

(ii) an application has been or will be made for permission for the derivatives of units to be listed for quotation or quoted on a securities exchange and the units have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange;

(f) it is an offer of units in a business trust made to any existing unitholder of the business trust or any holder of debentures of the trustee-manager issued in its capacity as trustee-manager of the business trust whose units are listed for quotation on a securities exchange; or

(g) it is an offer of derivatives of units in a business trust made to any existing unitholder of the business trust or any

holder of debentures of the trustee-manager issued in its capacity as trustee-manager of the business trust whose units are listed for quotation on a securities exchange, where such derivatives of units may only be exercised or converted by any existing unitholder or holder of debentures into units of the business trust.

(2) An offer of units or derivatives of units in a business trust does not come within Subsection (1) (d) or (e) if —

(a) the units or derivatives of units being offered are borrowed by the issuer from an existing unitholder or holder of derivatives of units, solely for the purpose of facilitating the offer of units or derivatives of units by the issuer; and

(b) such borrowing is made under an agreement or arrangement between the issuer and the unitholder or holder which promises the issue or allotment of units or derivatives of units by the issuer to the unitholder or holder at the same time or shortly after the offer.

(3) Subdivision (2) of this Division (other than section 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 an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a

particular class in an unlisted corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

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

(b) it is made in connection with a proposed compromise or arrangement between —

(i) an unlisted corporation and its creditors or a class of them; or

(ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and

other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country in which the corporation was incorporated;

(c) it is made (whether or not in relation to units or derivatives of units in a business trust that have been previously issued) by the trustee of the business trust to a qualifying person, where the units or derivatives of units are to be held by or for the benefit of the qualifying person and are the units or derivatives of units of the business trust or the securities of any of its related parties;

(d) it is an offer to enter into an underwriting agreement relating to units or derivatives of units in a business trust; or

(e) it is an offer of units or derivatives of units in a business trust —

(i) being a business trust which is registered in Singapore or otherwise, whose units or derivatives of units are not listed for quotation on a securities exchange; or

(ii) being a business trust which is not registered in Singapore, whose units or derivatives of units are listed for quotation on a securities exchange and such listing is not a primary listing,

that is made to existing unitholders of the business trust or holders of debentures of the trustee issued in its capacity as trustee of the business trust (whether or not it is renounceable in favour of persons other than existing unitholders or holders of debentures).

(4) An offer of units or derivatives of units in a business trust comes within subsection (3) (c) only if no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(a) the holder of a capital markets services licence to deal in securities;

(b) an exempt person in respect of dealing in securities; or

(c) a person who is licensed, approved, authorized or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealings.

(5) For the purposes of subsection (3) (c), a person is a qualifying person in relation to a business trust if he is a bona fide director or equivalent person, former director or equivalent person,

consultant, adviser, employee or former employee of the trustee of the business trust or a related corporation of that trustee (being a corporation), or if he is the spouse, widow, widower or a child, adopted child or step-child below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

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

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

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

then Subdivision (2) of this Division (other than section 282Q) shall not apply to such offer for a period of 6 months from the date of the declaration.

(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.

(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 to accredited investors and certain other persons

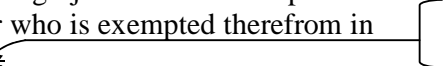
282Z. —(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust, whether or not they have been previously issued, where the offer is made to a relevant person, if —

(a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

(b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities; or

(iii) a person who is licensed, approved, authorized or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing;  : and

(2) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust to a person who acquires the units or derivatives of units as principal, whether or not the units or derivatives of units have been previously issued, if —

(a) the offer is on terms that the units or derivatives of units may only be acquired at a consideration of not less than ~~\$200,000~~ (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer;

(c) no prospectus in respect of the units or derivatives of units being offered has been registered by the Authority or, where a prospectus has been registered —

- (i) the prospectus has expired pursuant to section 282K; or
- (ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

100,000

and

(c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities; or

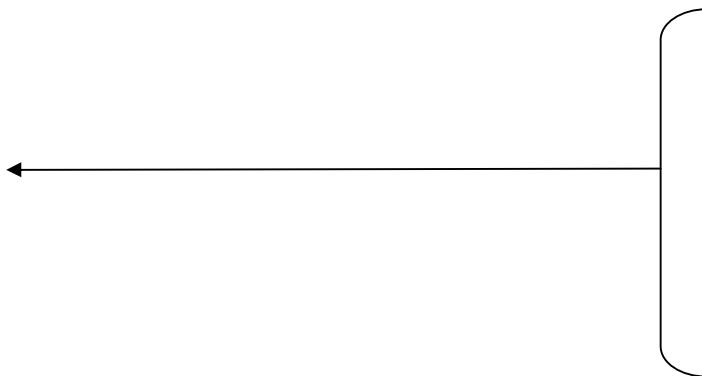
(iii) a person who is licensed, approved, authorized or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing;

; and

(d) no prospectus in respect of the units or derivatives of units being offered has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 282K;
or

(ii) the person making the offer has prior to the making of this offer —



(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

(3) In this section —

"advertisement" means —

(a) a written or printed communication;

(b) a communication by radio, television or other medium of communication; or

(c) a communication by means of a recorded telephone message,

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

(i) an information memorandum;

(ii) a publication which 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 recognised securities exchange, which is made by any person; or

(iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;

"information memorandum" means a document —

(a) purporting to describe —

(i) the units or derivatives of units in the business trust being offered; or

(ii) the business and affairs of any one or more of the following —

(A) the issuer;

(B) the person making the offer;

(C) the business trust;

(D) the trustee of the business trust;

(b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units or derivatives of units in the business trust being offered;

"relevant person" means —

(a) an accredited investor;

(b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;

(c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;

(d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

(e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

(4) In the definition of “information memorandum” in subsection (3), the reference to the affairs of the issuer, the person making the offer, the trustee of the business trust or the business trust shall —

(a) in the case where the issuer, the person making the offer or the trustee of the business trust is a corporation, be construed as including a reference to the matters referred to in section 2 (2);

(b) in the case where the issuer, the person making the offer or the trustee of the business trust is not a corporation, be construed to refer to such matters as may be prescribed by the Authority; and

(c) in the case of a business trust be construed as referring to

such matters as may be prescribed by the Authority.

(5) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units or derivatives of units in a business trust under section 282Y or this section for his own account shall be considered an exempt person even though he does not comply with that requirement.

(6) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2) (a).

Offer of securities acquired pursuant to section 282Y or 282Z

282ZA. —(1) ~~Notwithstanding~~ sections 282V, 282W, 282X (1) (d), 1 (e) and (3) (c) and 282ZB, where units or derivatives of units in a business trust initially acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z are sold within the period of 6 months from the date of the initial acquisition to any person other than —

Subject to subsection (7) and notwithstanding

(a) an institutional investor;

(b) a relevant person as defined in section 282Z (3); or

(c) any person pursuant to an offer referred to in section 282Z (2),

then Subdivision (2) of this Division shall apply to the offer resulting in that sale.

(2) Where units or derivatives of units in a business trust initially acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z are sold to —

(a) an institutional investor;

(b) a relevant person as defined in section 282Z (3); or

(c) any person pursuant to an offer referred to in section 282Z (2),

Subdivision (2) of this Division shall not apply to the offer resulting in that sale.

(3) ~~Securities~~ of a corporation (other than a corporation that is an accredited investor) —

Subject to subsection (7), securities

(a) the sole business of which is to hold investments; and

(b) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any units or derivatives of units in a business trust pursuant to an offer made in reliance on an exemption under section 282Z unless —

(i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 282Z (3); or

(B) arises from an offer referred to in section 275 (1A);

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

(4) ~~Where~~ —

Subject to subsection (7), where

(a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and

(b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust shall not be transferred within 6 months after units or derivatives of units in a business trust are acquired for the trust pursuant to an offer made in reliance on an exemption under section 282Z unless —

(i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 282Z (3); or

(B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

(5) For the avoidance of doubt, the reference to beneficiaries in subsection (4) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

(6) For the avoidance of doubt, where any units or derivatives of units in a business trust are acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z, an offer to sell those units or derivatives of units may be made in reliance on an exemption under section 282X (1) (d) or (e) after 6 months have elapsed from the date of the first-mentioned offer.

(7) Subsections (1), (3) and (4) shall not apply in relation to an offer of restricted units or derivatives of units in a business trust where —

(a) an offer of units or derivatives of units in the business trust has been made in or accompanied by a prospectus and these units or derivatives of units are listed for quotation on a securities exchange; and

(b) the restricted units or derivatives of units are of the same class or can be converted into securities of the same class as the units or derivatives of units referred to in paragraph (a).

(8) In subsection (7), “restricted units or derivatives of units” means units or derivatives of units in a business trust that are previously acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z.

Offer made using offer information statement

subsections (2) and (2A)

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 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).

(2) Subsection (1) shall apply to an offer of units or derivatives of units in a business trust referred to therein only for a period of 6 months from the date of lodgment of the offer information

statement relating to that offer.

(2A) For the avoidance of doubt, section 282L shall not apply to an offer of units or derivatives of units in a business trust to be made in reliance on the exemption under subsection (1).

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

(4) Sections 282I, 282J, 282N, 282O and 282P shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4) —

(a) a reference in section 282I or 282J to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and

(b) a reference in section 282N or 282O to any information or new circumstance required to be included in a prospectus under section 282F shall be read as a reference to any information prescribed under subsection (1) (b).

(6) Where the written consent of an expert is required to be given

under section 282I (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.

(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.

Interpretation of this Division

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

...

~~"chief executive officer", in relation to a corporation, means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;~~

...

Use of term “real estate investment trust”

283A. —(1) ~~No person shall, when describing or referring to any arrangement the rights or interests of which are will be or have~~

~~been the subject of an offer or intended offer, use the term “real estate investment trust” or any of its derivatives in any language in the name or description or any representation of that arrangement, unless—~~

~~(a) the arrangement is authorised under section 286 or is one for which an application for authorisation has been made and has not been refused by the Authority under that section;~~

~~(b) the arrangement is recognised under section 287 or is one for which an application for recognition has been made and has not been refused by the Authority under that section; or~~

~~(c) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a class of persons declared by the Authority by order published in the *Gazette* as persons who may use such term or derivative.~~

(1) No person shall, when describing or referring to any arrangement the rights or interests of which are, will be or have been the subject of an offer or intended offer, use the term “real estate investment trust” or any of its derivatives in any language in the name or description or any representation of that arrangement, unless —

(a) the arrangement is authorised under section 286 or is one for which an application for authorisation has been made and has not been refused by the Authority under that section;

(b) the arrangement is recognised under section 287 or is one for which an application for recognition has been made and has not been refused by the Authority under that section; or

(c) the person —

(i) makes the offer or intended offer of rights or interests in an arrangement only to —

(A) an institutional investor;

(B) a relevant person as defined in section 305(5); or

(C) a person who, if he acquires any right or interest in the arrangement, does so as principal and on terms that the right or interest is acquired at a consideration

of not less than \$100,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(ii) informs every person to whom it makes the offer or intended offer that the offer or intended offer does not relate to a collective investment scheme which is authorised under section 286 or recognised under section 287; and

(iii) if the offer or intended offer is made to a person referred to in paragraph (B) or (C), satisfies the conditions under subsection (1A); or

(d) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a class of persons declared by the Authority by order published in the Gazette as persons who may use such term or derivative.

(1A) Where a person makes an offer or intended offer under subsection (1)(c)(i)(B) or (C), that person shall comply with the following conditions:

(a) that the offer or intended offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

←

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

(3) For the avoidance of doubt, in subsection (1) —

(a) “offer” or “intended offer”, in relation to any rights or interests in an arrangement, includes an offer or intended offer in relation to any such rights or interests that have previously been issued; and

(b) “representation”, in relation to an arrangement, includes a representation of the arrangement in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

(b) that no selling or promotional expenses are paid or incurred in connection with the offer or intended offer, other than expenses incurred —

(i) for administrative or professional services in respect of the offer or intended offer; or

(ii) by way of commission or fee for services rendered in respect of the offer or intended offer by —

(A) the holder of a capital market services licence to deal in securities;

(B) an exempt person in respect of dealing in securities; or

(C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

Authority may disapply this Division to certain offers and invitations

284A. Notwithstanding any provision to the contrary in this Division, where —

(a) an offer of units in a collective investment scheme is one to which (but for this section) both this Division and Division 1 apply; and

(b) the Authority has by order published in the *Gazette* declared that this Division shall not apply to that offer or a class of offers to which that offer belongs,

then this Division ▼ does not apply to that offer.

(other than section 283A)

Division not to apply to certain collective investment schemes which are business trusts

284B. This Division ▼ does not apply to an offer of units in a collective investment scheme, where —

(other than section 283A)

(a) the collective investment scheme is also a registered business trust; or

(b) the collective investment scheme is also a business trust

and the offer is made in reliance on an exemption under Subdivision (3) of Division 1A.

Subdivision 2 – Authorisation and Recognition

Offers to public

Requirement for authorisation or recognition

285. —(1) No person shall make an offer of units in a collective investment scheme, if the collective investment scheme has not been authorised under section 286 or recognised under section 287.

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

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 —

(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 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 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 holds a representative's licence in respect of marketing of collective investment schemes under that Act;

(iv) a representative of an exempt financial adviser.

is a representative

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

(2C) In subsection (2B), “exempt financial adviser” and “representative” shall have the same meanings 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).

(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

(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 recognised 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 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

(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 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),

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

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

(a) he publishes an advertisement or publication in the ordinary course of a business of —

(i) publishing a newspaper, periodical or magazine; or

(ii) broadcasting by radio, television, or any other means of broadcasting or communication; and

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

(6) Subsection (4) (c) and (d) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(7) Any person who contravenes subsection (1) or who knowingly authorised or permitted the publication or dissemination in

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

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

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

(10) Any person who contravenes any of the conditions under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(11) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(12) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented,

regardless of whether such information is in text or otherwise.

Small offers

302B. —(1) Subdivisions (2) and (3) of this Division shall not apply to personal offers of units in a collective investment scheme by a person if —

(a) the total amount raised by the person from such offers within any period of 12 months does not exceed —

(i) \$5 million (or its equivalent in a foreign currency);
or

(ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);

(b) in respect of each offer, the person making the offer gives the person to whom he makes the offer —

(i) the following statement in writing:

This offer is made in reliance on the exemption under section 302B (1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary

Authority of Singapore and the scheme is not authorised or recognised by the Authority.

(ii) a notification in writing that the units to which the offer (referred to in this sub-paragraph as the initial offer) relates shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivisions (2) and (3) of this Division;

(B) in reliance on subsection (8) (c) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under this subsection;

(c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

(d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for

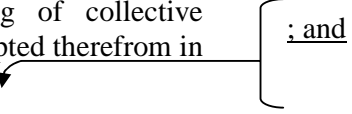
administrative or professional services, or by way of commission or fee for services rendered by any of the following persons:

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities;

(iii) a person licensed under the Financial Advisers Act (Cap. 110) in respect of marketing of collective investment schemes;

(iv) an exempt financial adviser as defined in section 2 (1) of the Financial Advisers Act; or

(v) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or marketing of collective investment schemes, or who is exempted therefrom in respect of such dealing or marketing.  : and

(2) For the purposes of subsection (1) (b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of units in a collective investment scheme is one that —

(a) may only be accepted by the person to whom it is made; and

(b) is made to a person who is likely to be interested in that offer, having regard to —

(e) no prospectus in respect of the units being offered has been registered by the Authority or, where a prospectus has been previously registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

(i) any previous contact before the date of the offer between the person making the offer and that person;

(ii) any previous professional or other connection established before that date between the person making the offer and that person; or

(iii) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the offer or any of the persons specified in subsection (1) (d) (i) to (v) that he is interested in offers of that kind.

(4) In determining the amount raised by an offer of units in a collective investment scheme, the following shall be included:

(a) the amount payable for the units at the time when they are issued or sold;

(b) if the units are issued partly-paid, any amount payable at a future time if a call is made; and

(c) if the units carry a right (by whatever name called) to be converted into other units or to acquire other units in a collective investment scheme, any amount payable on the exercise of the right to convert them into, or to acquire, other units in a collective investment scheme.

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1) (a), each amount raised —

(a) by that person from any offer of units in the same collective investment scheme; or

(b) by that person or another person from any offer of securities which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), section 272A (1) or 282V (1) shall be included.

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of units in a collective investment scheme made by a person acting as an agent of another person shall be treated as an offer made by that other person.

(8) Where units acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the units to another person, Subdivisions (2) and (3) of this Division

shall apply to the offer from the first-mentioned person to the second-mentioned person which resulted in that sale, unless —

(a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);

(b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units were acquired under the initial offer; or

(c) such offer is one —

(i) that may be accepted only by the person to whom it is made;

(ii) that is made to a person who is likely to be interested in the offer having regard to —

(A) any previous contact before the date of the offer between the person making the initial offer and that person;

(B) any previous professional or other connection established before that date between the person making the initial offer and that person; or

(C) any previous indication (whether through

statements made or actions carried out) before that date by that person to the person making the initial offer or any of the persons specified in subsection (1) (d) (i) to (v) that he is interested in offers of that kind;

(iii) in respect of which the first-mentioned person has given the second-mentioned person —

(A) the following statement in writing:

This offer is made in reliance on the exemption under section 302B (8) (c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority.

(B) a notification in writing that the units being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this

Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in subsection (1) (d) (i) to (v).

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8) (c) (iii).

(10) In subsections (1) (c) and (8) (c) (iv), “advertisement” means

(a) a written or printed communication;

(b) a communication by radio, television or other medium of communication; or

(c) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

(i) a document —

(A) purporting to describe the units in a collective investment scheme being offered; and

(B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units being offered;

(ii) a publication which 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 recognised securities exchange, which is made by any person; or

(iii) a publication which 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, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting.

Private placement

302C. —(1) Subdivisions (2) and (3) of this Division shall not apply to offers of units in a collective investment scheme that are made by a person if —

(a) the offers are made to no more than 50 persons within any period of 12 months;

(b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; ~~and~~

(c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B (1) (d) (i) to (v); ← ; and

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1) (a).

(3) In determining whether offers of units in a collective investment scheme by a person are made to no more than the applicable number of persons specified in subsection (1) (a) within a period of 12 months, each person to whom —

(a) an offer of units in the same collective investment scheme is made by the first-mentioned person; or

(b) an offer of securities is made by the first-mentioned person or another person where such offer is a closely related offer,

(d) no prospectus in respect of the units being offered has been registered by the Authority or, where a prospectus has previously been registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

if any, within that period in reliance on the exemption under this section, section 272B or section 282W shall be included.

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

(a) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units which are the subject of the offer;

(b) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the units which are the subject of the offer;

(c) an offer of units in a collective investment scheme to 2 or more persons who will own the units acquired as joint owners shall be treated as an offer to a single person;

(d) an offer of units in a collective investment scheme to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;

(e) offers of units in a collective investment scheme made by a person as an agent of another person shall be treated as offers made by that other person;

(f) where an offer of units in a collective investment scheme is made to a person with a view to another person acquiring an interest in those units by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1) (a); and

(g) where —

(i) an offer of units in a collective investment scheme is made to a person in reliance on the exemption under subsection (1) with a view to those units being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under

any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 305C,

both persons shall be counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1) (a).

(6) In subsection (1) (b), “advertisement” has the same meaning as in section 302B(10).

Offer made to accredited investors and certain other persons

305. —(1) Except to such extent and with such modifications as may be prescribed by the Authority, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (referred to in this section as a restricted scheme), where the offer is made to a relevant person, if the conditions in subsection (3) are satisfied.

(2) Except to such extent and with such modifications as may be prescribed by the Authority, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (also referred to in this section as a restricted scheme) to a person who acquires the units as principal if the offer

is on terms that the units may only be acquired at a consideration of not less than ~~\$200,000~~ (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and if the conditions in subsection (3) are satisfied.

\$100,000

(3) The conditions referred to in subsections (1) and (2) are —

(a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

(b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B (1) (d) (i) to (v); and

~~(c) the offer is made in or accompanied by an information memorandum which —~~

~~(i) contains the following statement:~~

~~The offer which is the subject of this information memorandum is not allowed to be made to the retail public. This information memorandum is not a prospectus as defined in the Securities and Futures Act. Accordingly statutory liability under that Act in relation to the content of prospectuses~~

(c) no prospectus in respect of the units being offered has been registered by the Authority or, where a prospectus has been previously registered —

(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has prior to the making of this offer —

(A) informed the Authority by notice in writing of its intent to make this offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the investor to whom this offer is made that the offer is made in reliance on the exemption under this subsection.

would not apply. You should consider carefully whether the investment is suitable for you.

~~(ii) states the particulars in respect of the scheme.~~

~~(4) The particulars referred to in subsection (3) (c) (ii) to be included in the information memorandum are —~~

~~(a) the investment objectives, focus and approach of and risks of subscribing for or purchasing units in the restricted scheme;~~

~~(b) whether the offer of units in the restricted scheme is regulated by any financial supervisory authority and if so, the title and jurisdiction of the legislation under which the restricted scheme is regulated and the name and contact details of the authority;~~

~~(c) in the case of a restricted scheme which is constituted in Singapore the name and place of incorporation of the manager for the scheme and, where applicable, the trustee for the scheme;~~

~~(d) in the case of a restricted scheme which is constituted outside Singapore which —~~

~~(i) is a corporation —~~

~~(A) its place of incorporation and business address; and~~

~~(B) the name and place of incorporation or registration of the manager for the restricted scheme and, where applicable, the trustee or custodian for the restricted scheme; or~~

~~(ii) is not a corporation, the name and place of incorporation or registration of the manager for the restricted scheme and, where applicable, the trustee or custodian for the restricted scheme; and~~

~~(e) whether the manager for the restricted scheme and, where applicable, the trustee for the restricted scheme are regulated by any financial supervisory authority and if so, the name and contact details of the authority.~~

(5) In this section —

"advertisement" means —

(a) a written or printed communication;

(b) a communication by radio, television or other medium of communication; or

(c) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

(i) an information memorandum;

(ii) a publication which 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 recognised securities exchange, which is made by any person; or

(iii) a publication which 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, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;

"information memorandum" means a document —

(a) purporting to describe the units in a collective investment scheme being offered; and

(b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units being offered;

"relevant person" means —

(a) an accredited investor;

(b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;

(c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;

(d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent

person; or

(e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

(6) Notwithstanding any requirement under section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units in a collective investment scheme under section 304 or this section for his own account without complying with such requirement shall be considered an exempt person even though he does not comply with that requirement.

(7) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2).

First sale of units acquired pursuant to section 305

305A. —(1) ~~Notwithstanding~~ sections 302B, 302C, 303 (1) and 305B, where units in a collective investment scheme acquired pursuant to an offer made in reliance on an exemption under section 305 are first sold to any person other than —

(a) an institutional investor;

Subject to subsection (5) and notwithstanding

(b) a relevant person as defined in section 305 (5); or

(c) any person pursuant to an offer referred to in section 305 (2),

then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale.

(2) ~~Securities~~ of a corporation (other than a corporation that is an accredited investor) —

Subject to subsection (5), securities

(a) the sole business of which is to hold investments; and

(b) the entire share capital of which is owned by one or more individuals each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any units in a collective investment scheme pursuant to an offer made in reliance on an exemption under section 305, unless —

(i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 305 (5); or

(B) arises from an offer referred to in section 275
(1A);

(ii) no consideration is or will be given for the
transfer; or

(iii) the transfer is by operation of law.

(3) ~~Where~~ —

Subject to subsection (5), where

(a) the sole purpose of a trust (other than a trust the trustee of
which is an accredited investor) is to hold investments; and

(b) each beneficiary of the trust is an individual who is an
accredited investor,

the beneficiaries' rights and interest (howsoever described) in the
trust shall not be transferred within 6 months after units in a
collective investment scheme are acquired for the trust pursuant to
an offer made in reliance on an exemption under section 305,
unless —

(i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 305 (5); or

(B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

(4) For the avoidance of doubt, the reference to beneficiaries in subsection (3) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

Offer made using offer information statement

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 —

(5) Subsections (1), (2) and (3) shall not apply in relation to an offer of restricted units in a collective investment scheme where —

(a) an offer of units in the collective investment scheme has been made in or accompanied by a prospectus and these units are listed for quotation on a securities exchange; and

(b) the restricted units are of the same class or can be converted into units of the same class as the units referred to in paragraph (a).

(6) In subsection (5), “restricted units” means units of a collective investment scheme that are previously acquired pursuant to an offer made in reliance on an exemption under section 305.

subsections (2) and (2A)

(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).

(2) Subsection (1) shall apply to an offer of units referred therein only for a period of 6 months from the date of lodgment of the offer information statement relating to that offer.

(2A) For the avoidance of doubt, section 300 shall not apply to an offer of units in a collective investment scheme to be made in reliance on the exemption under subsection (1).

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

(4) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as may be prescribed by the Authority shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4) —

(a) a reference in sections 249 and 249A to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and

(b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus shall be read as a reference to any information prescribed under subsection (1) (a).

(6) Where the written consent of an expert is required to be given under section 249 (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.

(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.

New provision, immediately after section 316

Registration of representative office

316A. –(1) No person shall establish a representative office in Singapore without being registered by the Authority.

(2) A person who -

(a) establishes or operates a market in Singapore or elsewhere (referred to in this section as market operator), whether or not such person is required under section 6 of the Act to be an approved exchange or recognised market operator;

(b) establishes or operates a clearing facility in Singapore or elsewhere (referred to in this section as clearing facility operator) whether or not such person is required to make a notification to the Authority under section 49 of the Act; or

(c) is a corporation who carries on business in any regulated activity (referred to in this section as corporation) which –

(i) is not required under section 82 of the Act to hold a capital markets services licence; or

(ii) is not an exempt person.

and who desires to establish a representative office may apply in writing to the Authority for registration under this section and shall furnish such information or documents as the Authority may require.

(3) The Authority may refuse an application to register a representative office under subsection (2) if the market operator, clearing facility operator or corporation, as the case may be, fails to satisfy such criteria as may be determined by the Authority.

(4) The market operator, clearing facility operator or corporation, as the case may be, who establishes and registers a representative office shall furnish such information or documents as the Authority may require.

(5) The Authority may impose such conditions or restrictions as it considers necessary for the registration of a representative office on a market operator, clearing facility operator or corporation and the market operator, clearing facility operator or corporation, as the case may be, shall comply with such conditions or restrictions.

(6) The Authority may at any time vary or revoke any existing conditions or restrictions or impose additional conditions or restrictions on such market operator, clearing facility operator or corporation, as the case may be, under subsection (5).

(7) The Authority may withdraw the registration of a representative office of any market operator, clearing facility operator or corporation if the market operator, clearing facility operator or corporation, as the case may be, fails to comply with any condition or restriction imposed by the Authority in respect of the operations of the representative office.

(8) Subject to subsection (9), the Authority shall not –

(a) refuse an application to register a representative office under subsection (3); or

(b) withdraw the registration of a representative office under subsection (7),

without giving the market operator, clearing facility operator or corporation, as the case may be, an opportunity to be heard.

(9) The Authority may refuse an application to register a representative office under subsection (3) or withdraw the registration of a representative office under subsection (7) on any of the following grounds without giving the market operator, clearing facility operator or corporation, as the case may be, an opportunity to be heard:

(a) the market operator, clearing facility operator or corporation, as the case may be, 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 market operator, clearing facility operator or corporation, as the case may be;

(c) the market operator, clearing facility operator or corporation, as the case may be, 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.

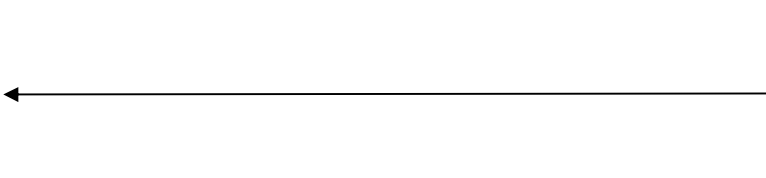
(10) Any person who is aggrieved by –

(a) the refusal of the Authority to register a representative under subsection (3); or

(b) the withdrawal of registration of a representative office by the Authority under subsection (7),

may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

(11) Any person who establishes a representative office without being registered by the Authority or continues to operate a representative office notwithstanding the withdrawal of registration by



the Authority under 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 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction.

Transitional Provision

[To be subsequently enacted in Regulations]

Any market operator, clearing facility operator or corporation specified in 316A(2), as the case may be, that has notified the Authority in writing prior to the appointed day of its intention to establish a representative office and established its representative office by the appointed day or such later date as may be approved in writing by the Authority (where such approval is given by the Authority on the appointed day) shall be deemed to be registered by the Authority on the appointed day subject to such conditions or restrictions as may be imposed by the Authority by notice in writing, whether on or after the appointed date.

PART XV

MISCELLANEOUS

sections 94 and 99J

317. — (1) Subject to ~~section 94~~, the Authority shall keep such records as it considers necessary, in such form as it thinks fit.

(2) Any person may, on payment of the prescribed fee —

~~(a) inspect any register kept by the Authority under section 94 or any prospectus or profile statement lodged with the Authority under Part XIII and such other records lodged with or kept by the Authority as may be prescribed; or~~

(a) inspect any record kept by the Authority under section 94 or 99J or any prospectus or profile statement lodged with the Authority under Part XIII; or

(b) require a copy of or extract from any such record to be given or certified by the Authority.

~~Corporate offenders and unincorporated associations~~

~~**331.** — (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.~~

~~(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and~~

Corporate offenders and unincorporated associations

331. —(1) Where a contravention of any provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and liable for the contravention for the purposes of proceedings under Division 4 of Part XII, and shall be liable to be proceeded against and punished accordingly.

~~defaults of a member in connection with his functions of management as if he were a director of the body corporate.~~

~~(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.~~

~~(3A) Where an offence under this Act is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.~~

~~(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.~~

~~(5) In this section—~~

~~“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability~~

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a contravention of any provision of this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and liable for the contravention for the purposes of proceedings under Division 4 of Part XII, and shall be liable to be proceeded against and punished accordingly.

(4) Where a contravention of any provision of this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and liable for the contravention for the purposes of proceedings under Division 4 of Part XII, and shall be liable to be proceeded against and punished accordingly .

(5) Where a contravention of any provision of this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and liable for the contravention for the purposes of proceedings under Division 4 of Part

Partnerships Act 2005;

~~"officer" —~~

~~(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or~~

~~(b) in relation to an unincorporated association (other than a partnership) means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity.~~

~~"partner", in relation to a partnership, includes a person purporting to act as a partner.~~

~~(6) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.~~

XII, and shall be liable to be proceeded against and punished accordingly.

(6) In this section —

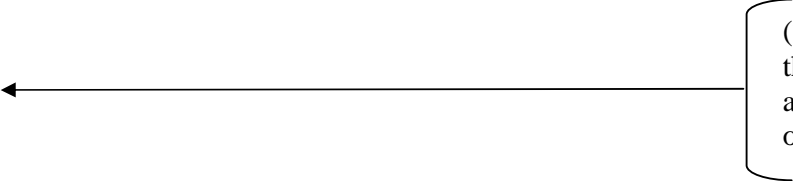
“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

"officer" —

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership) means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

"partner", in relation to a partnership, includes a person purporting to act as a partner.



(7) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Regulations

341.—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

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

(a) the criteria for authorisation or recognition of collective investment schemes and the constitution, operation, management and offer of such schemes including but not limited to the powers and duties of the managers, trustees or representatives and the rights and obligations of the participants of the schemes;

(b) the financial requirements and other criteria that a public company must fulfill for it to be considered for approval as a trustee;

(c) applications for capital markets services licences to carry on business in any regulated activity ~~or renewal of licences by persons holding a capital markets services licence to carry on business in any regulated activity~~ and their representatives and matters incidental thereto;

(d) the activities of, and standards to be maintained by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives, including the manner, method and place of soliciting business by the holder of the licence and their representatives and the conduct of such solicitation;

(e) *(Deleted by Act 16/2003)*

(f) the conditions for the conduct of business on a securities exchange, futures exchange, recognised market operator, or clearing facility;

(g) the form, content distribution and publication of written, printed or visual material and advertisements that may be distributed or used by a person in respect of any regulated activity, including advertisements offering the services of persons holding a capital markets services licence or offering capital markets products for sale;

(h) the particulars to be recorded in the profit and loss accounts and balance-sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of persons holding a capital markets services licence to carry on business in any regulated activity;

(i) the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;

(j) the manner in which persons holding a capital markets

services licence to carry on a business in any regulated activity conduct their dealings with their customers, conflicts of interest involving the holder of the licence and its customers, and the duties of the holder of a licence to its customers when making recommendations in respect of capital markets products;

(k) the purchase or sale of capital markets products for their own accounts, directly or indirectly by holders of capital markets services licences to carry on business in any regulated activity and their representatives;

(l) the disclosure by a holder of a capital markets services licence of any material interest that such person might have in a proposed transaction relating to trading in capital markets products;

(m) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of securities, futures contracts or leveraged foreign exchange trading;

(n) the regulation or prohibition of trading on the floor of a securities exchange, futures exchange or recognised market operator by members of a securities exchange, futures exchange or recognised market operator, as the case may be, or their representatives directly or indirectly for their own accounts and the prevention of such excessive trading on a securities exchange, futures exchange or recognised market operator but off the floor of a securities exchange, futures exchange or recognised market operator by members of a securities exchange, futures exchange or recognised market

operator, as the case may be, or their representatives directly or indirectly for their own accounts as the Authority may consider is detrimental to the maintenance of a fair and orderly market; and the exemption of such transactions as the Authority may decide to be necessary in the interest of the public, or a section of the public or for the protection of investors;

(o) the borrowing in the ordinary course of business by persons holding a capital markets services licence as the Authority may consider necessary or appropriate in the interest of the public, or a section of the public or for the protection of investors;

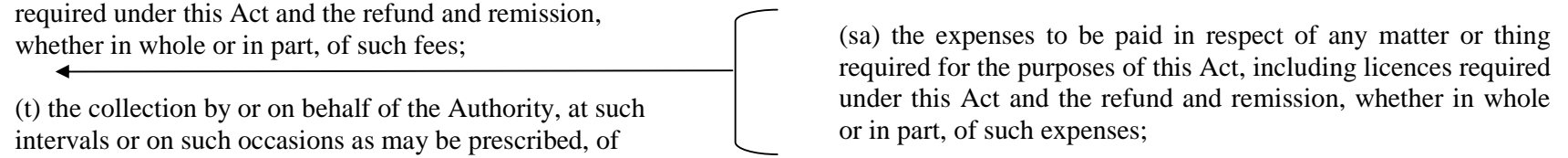
(p) the prohibition or regulation of dealing in securities in circumstances where the person who deals in the securities does not hold or have an interest in the securities which are being or are proposed to be dealt with;

(q) the prohibition or restriction of forward contracts in securities of corporations that are admitted to the official list of a securities exchange;

(r) the forms for the purposes of this Act;

(s) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act and the refund and remission, whether in whole or in part, of such fees;

(t) the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of



(sa) the expenses to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act and the refund and remission, whether in whole or in part, of such expenses;

statistical information as to such matters relevant to capital markets products as may be prescribed and for the collection and use of such information for any purpose, whether or not connected with the prescribed capital markets products; and

(u) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

[16/2003;1/2005]

(3) Except as otherwise expressly provided in this Act, the regulations made under this Act —

(a) may be of general or specific application;

(b) may provide that a contravention of any specified provision thereof shall be an offence; and

(c) may provide for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[16/2003]