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## BILLS SUPPLEMENT

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**Notification No. B 15** — The Securities and Futures (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 14th day of August 2003.

# **Securities and Futures (Amendment) Bill**

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**Bill No. 15/2003.**

*Read the first time on 14th August 2003.*

A BILL

*i n t i t u l e d*

An Act to amend the Securities and Futures Act (Chapter 289 of the 2002 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

### Short title and commencement

1. This Act may be cited as the Securities and Futures (Amendment) Act 2003 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### 5 Amendment of long title

2. The long title to the Securities and Futures Act (referred to in this Act as the principal Act) is amended by inserting, immediately after the words “foreign exchange trading,”, the words “and of clearing facilities,”.

### Amendment of section 2

10 3. Section 2(1) of the principal Act is amended —

(a) by deleting the definition of “clearing facility” and substituting the following definition:

“ “clearing facility” means —

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

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

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

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

(b) by deleting paragraph (iv) of the definition of “collective investment scheme” and substituting the following paragraphs:

25 “(iv) an arrangement made by or on behalf of a corporation solely for the benefit of persons each of whom is either a bona fide director, former director, consultant, adviser, employee or former employee of that corporation or a related corporation of that corporation, or a spouse, widow, widower or a child, adopted child or step-child below the age of 18 of  
30 such director, former director, employee or former employee;

- (*iva*) an arrangement made by or on behalf of 2 or more corporations solely for the benefit of persons each of whom is either a bona fide director, former director, consultant, adviser, employee or former employee of any of those corporations or a related corporation of any of those corporations, or a spouse, widow, widower or a child, adopted child or step-child below the age of 18 of such director, former director, employee or former employee;”;
- (*c*) by inserting, immediately after the words “the objects thereof” in paragraph (vii) of the definition of “collective investment scheme”, the word “solely”;
- (*d*) by deleting the definition of “customer” and substituting the following definition:
- “ “customer”, in relation to a holder of a capital markets services licence, means —
- (*a*) for the purposes of Parts IV, VI, VII and XV, a person on whose behalf the holder carries on or will carry on any regulated activity; and
- (*b*) for the purposes of Part V, a person on whose behalf the holder carries on or will carry on any regulated activity, or any other person with whom the holder, as principal, enters or will enter into transactions —
- (i) for the sale or purchase of securities;
- (ii) for the sale or purchase of futures contracts; or
- (iii) in connection with leveraged foreign exchange trading,
- but does not include such person or class of persons as may be prescribed;”;
- (*e*) by inserting, immediately after the definition of “representative”, the following definition:

“ “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;” and

- 5 (f) by inserting, immediately after the definition of “share”, the following definition:

“ “subsidiary” has the same meaning as in section 5 of the Companies Act;”.

### **Amendment of section 5**

- 10 4. Section 5 of the principal Act is amended by deleting subsection (9) and substituting the following subsection:

“(9) The Authority may revoke an exemption granted to a person under subsection (3) or (5) on any ground referred to in subsection (6) on the basis of any of the following circumstances without giving the person an opportunity to be heard:

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

### **Amendment of section 6**

- 25 5. Section 6 of the principal Act is amended by deleting subsection (9) and substituting the following subsection:

“(9) The Authority may revoke an exemption granted to a person under subsection (3) or (5) on any ground referred to in subsection (6) on the basis of any of the following circumstances without giving the person an opportunity to be heard:

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

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

#### **Amendment of section 7**

6. Section 7 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for penalties not exceeding a fine of \$200,000 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.”.

#### **Amendment of section 9**

7. Section 9 of the principal Act is amended by inserting, immediately after subsection (6), the following subsections:

“(6A) Subject to subsection (6B), the Authority shall not refuse to grant an approval under subsection (4) without giving the applicant an opportunity to be heard.

(6B) The Authority may refuse to grant an approval to an applicant under subsection (4) on the ground that it would be contrary to the interests of the investing public to grant the approval on the basis of any of the following circumstances without giving the applicant an opportunity to be heard:

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

- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.”.

### **Amendment of section 12**

8. Section 12 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) The Authority may revoke an approval granted to a corporation under section 9 on any ground referred to in subsection (1) on the basis of any of the following circumstances without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.”.

### **Amendment of section 15**

9. Section 15 of the principal Act is amended —

- (a) by deleting the words “subsection (5)” in subsection (3) and substituting the words “subsection (7)”; and
- (b) by deleting subsections (4) and (5) and substituting the following subsections:

“(4) Until the person to whom a direction is issued under subsection (3) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum

or articles of association of the securities exchange or futures exchange —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
  - 5 (b) the securities exchange or futures exchange shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
  - 10 (c) except in a liquidation of the securities exchange or futures exchange, the securities exchange or futures exchange shall not make any payment (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction.
- 15 (5) Any issue of shares by the securities exchange or futures exchange in contravention of subsection (4)(b) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return those shares to the securities exchange or futures exchange, upon
- 20 which the securities exchange or futures exchange shall return to the person any payment received from him in respect of those shares.
- (6) Any payment made by the securities exchange or futures exchange in contravention of subsection (4)(c) shall be deemed
- 25 to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return the payment he has received to the securities exchange or futures exchange.
- (7) Any person who contravenes subsection (1) or any
- 30 condition or restriction imposed by the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 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
- 35 continues after conviction.



(8) Any person who contravenes subsection (4)(b) or (c), (5) or (6) or any direction issued by the Authority under subsection (3) 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.

(9) For the avoidance of doubt, a direction issued under subsection (3) shall be deemed not to be subsidiary legislation.”.

### **Amendment of section 17**

**10.** Section 17 of the principal Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) An amendment (whether in its original form or altered or supplemented under subsection (3)) shall not come into force unless the written notice referred to in subsection (1) is given at least 21 days before the amendment is made.

(2A) Notwithstanding subsection (2), the Authority may, on the application of a securities exchange or futures exchange, allow an amendment to come into force before the expiry of the period of 21 days referred to in that subsection.”.

### **Amendment of section 22**

**11.** Section 22 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) The Authority may direct a securities exchange or futures exchange to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the securities exchange or futures exchange 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.”.

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### **Amendment of section 29**

**12.** Section 29 of the principal Act is amended by inserting, immediately after subsection (5), the following subsections:

“(5A) Subject to subsection (5B), the Authority shall not refuse to grant an approval under subsection (4) without giving the applicant an opportunity to be heard.

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(5B) The Authority may refuse to grant an approval to an applicant under subsection (4) on the ground that it would be contrary to the interests of the investing public to grant the approval on the basis of any of the following circumstances without giving the applicant an opportunity to be heard:

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- (a) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.”.

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### **Amendment of section 30**

**13.** Section 30 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) The Authority may revoke an approval granted to a corporation under section 29 on any ground referred to in subsection (1) on the basis of any of the following circumstances without giving the corporation an opportunity to be heard:

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- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.”.

#### 10 **Amendment of section 33**

**14.** Section 33 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) The Authority may direct an exchange holding company to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the exchange holding company 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.”.

#### **Amendment of section 34**

**15.** Section 34 of the principal Act is amended —

- (a) by deleting the words “subsection (5)” in subsection (3) and substituting the words “subsection (7)”; and
- (b) by deleting subsections (4) and (5) and substituting the following subsections:

“(4) Until the person to whom a direction is issued under subsection (3) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association of the exchange holding company —

(a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;

(b) the exchange holding company shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

(c) except in a liquidation of the exchange holding company, the exchange holding company shall not make any payment (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(5) Any issue of shares by the exchange holding company in contravention of subsection (4)(b) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return those shares to the exchange holding company, upon which the exchange holding company shall return to the person any payment received from him in respect of those shares.

(6) Any payment made by the exchange holding company in contravention of subsection (4)(c) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return the payment he has received to the exchange holding company.

(7) Any person who contravenes subsection (1) or any condition or restriction imposed by the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 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.

(8) Any person who contravenes subsection (4)(b) or (c), (5) or (6) or any direction issued by the Authority under subsection (3) 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.

(9) For the avoidance of doubt, a direction issued under subsection (3) shall be deemed not to be subsidiary legislation.”.

### **Amendment of section 36**

**16.** Section 36 of the principal Act is amended by inserting, immediately after subsection (7), the following subsections:

“(7A) Subject to subsection (7B), the Authority shall not refuse to recognise an applicant as a recognised trading system provider under subsection (4) without giving the applicant an opportunity to be heard.

(7B) The Authority may refuse to recognise an applicant as a recognised trading system provider under subsection (4) on the ground that it would be contrary to the interests of the investing public to grant the recognition on the basis of any of the following circumstances without giving the applicant an opportunity to be heard:

- (a) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.”.

### **Amendment of section 40**

**17.** Section 40 of the principal Act is amended —

(a) by deleting the word “approval” in subsection (3) and substituting the word “recognition”; and

5 (b) by deleting subsection (4) and substituting the following subsection:

10 “(4) The Authority may revoke a recognition granted to a recognised trading system provider under section 36 on any ground referred to in subsection (1) on the basis of any of the following circumstances without giving the recognised trading system provider an opportunity to be heard:

(a) the recognised trading system provider is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

15 (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 recognised trading system provider;

20 (c) the recognised trading system provider 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.”.

### **Amendment of section 44**

25 **18.** Section 44 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

30 “(4) The Authority may direct a recognised trading system provider to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the recognised trading system provider 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.”.

#### **Amendment of section 49**

**19.** Section 49(1) of the principal Act is amended by inserting, immediately before the word “means” in the definition of “property”, the words “, in relation to a market charge or market collateral,”.

#### **Amendment of section 50**

**20.** Section 50 of the principal Act is amended by deleting subsection (7) and substituting the following subsection:

“(7) The Authority may revoke an exemption granted to a person under subsection (3) on any ground referred to in subsection (4) on the basis of any of the following circumstances without giving the person an opportunity to be heard:

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

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

(c) the 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.”.

#### **Amendment of section 51**

**21.** Section 51 of the principal Act is amended —

(a) by deleting the words “clearing arrangements for transactions in securities or futures contracts” in subsection (4)(a) and

substituting the words “arrangements for the clearing or settlement of transactions”; and

- (b) by inserting, immediately after subsection (5), the following subsections:

“(5A) Subject to subsection (5B), the Authority shall not refuse to grant an approval under subsection (4) without giving the applicant an opportunity to be heard.

(5B) The Authority may refuse to grant an approval to an applicant under subsection (4) on the ground that it would be contrary to the interests of the investing public to grant the approval on the basis of any of the following circumstances without giving the applicant an opportunity to be heard:

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

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

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

#### **Amendment of section 52**

**22.** Section 52 of the principal Act is amended —

(a) by deleting the words “securities or futures contracts” in paragraph (a) and substituting the words “any market contract or class of market contracts”; and

(b) by deleting the words “involving securities or futures contracts” in paragraph (b).

#### **Amendment of section 53**

**23.** Section 53 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:



“(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for penalties not exceeding a fine of \$200,000 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.”.

#### 10 **Amendment of section 55**

**24.** Section 55 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) The Authority may revoke an approval granted to a corporation under section 51 on any ground referred to in subsection (1) on the basis of any of the following circumstances without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.”.

#### **Amendment of section 57**

**25.** Section 57(1) of the principal Act is amended by deleting the words “any dealings in securities or trading in futures contracts, any clearing arrangements for securities or futures contracts” and substituting the words “any transaction or class of transactions cleared or settled by the clearing house”.

### **New section 57A**

26. The principal Act is amended by inserting, immediately after section 57, the following section:

#### **“Control of substantial shareholding in clearing house**

5       **57A.**—(1) No person shall enter into any agreement to acquire shares by virtue of which he would, if the agreement is carried out, acquire a substantial shareholding in a clearing house without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to his entering into the  
10       agreement.

(2) The Authority may grant its approval referred to in subsection (1) subject to such conditions or restrictions as the Authority may think fit.

(3) Without prejudice to subsection (7), the Authority may, for the  
15       purposes of securing compliance with subsection (1) or any condition or restriction imposed under subsection (2), by notice in writing direct the transfer or disposal of all or any of the shares of the clearing house in which the substantial shareholder has or has had an interest.

(4) Until the person to whom a direction is issued under subsection  
20       (3) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association of the clearing house —

(a) no voting rights shall be exercisable in respect of the shares  
25       which are the subject of the direction;

(b) the clearing house shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

(c) except in a liquidation of the clearing house, the clearing  
30       house shall not make any payment (whether by way of cash dividend or dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(5) Any issue of shares by the clearing house in contravention of subsection (4)(b) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return those shares to the clearing house, upon which the clearing house shall return to the person any payment received from him in respect of those shares.

(6) Any payment made by the clearing house in contravention of subsection (4)(c) shall be deemed to be null and void and the person to whom a direction has been issued under subsection (3) shall immediately return the payment he has received to the clearing house.

(7) Any person who contravenes subsection (1) or any condition or restriction imposed by the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 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.

(8) Any person who contravenes subsection (4)(b) or (c), (5) or (6) or any direction issued by the Authority under subsection (3) 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.

(9) For the avoidance of doubt, a direction issued under subsection (3) shall be deemed not to be subsidiary legislation.”.

## **Amendment of section 59**

**27.** Section 59 of the principal Act is amended —

(a) by deleting subsection (2) and substituting the following subsections:

“(2) An amendment (whether in its original form or altered or supplemented under subsection (3)) shall not come into force unless the written notice referred to in subsection (1) is given at least 21 days before the amendment is made.

(2A) Notwithstanding subsection (2), the Authority may, on the application of a clearing house, allow an amendment to

come into force before the expiry of the period of 21 days referred to in that subsection.”; and

- (b) by deleting the words “securities or futures contract” in subsection (5)(b) and substituting the words “transaction or class of transactions”.

### **Amendment of section 63**

**28.** Section 63 of the principal Act is amended —

- (a) by deleting paragraphs (a) and (b) of subsection (1) and substituting the following paragraphs:

“(a) for ensuring the fair, orderly and expeditious clearing and settlement of transactions;

(b) for ensuring the integrity and stability of the financial system; or”; and

- (b) by deleting paragraph (a) of subsection (2) and substituting the following paragraph:

“(a) the clearing or settlement of any transaction or class of transactions by a clearing house and the making of adjustments of contractual obligations arising out of that transaction or class of transactions;”.

### **Amendment of section 64**

**29.** Section 64 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) The Authority may direct a clearing house to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the clearing house 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.”.

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### **Amendment of section 65**

**30.** Section 65 of the principal Act is amended —

- (a) by deleting the words “at which securities or futures contracts are to be liquidated” in subsection (1)(b);
- 10 (b) by deleting the words “for any securities or futures contracts” in subsection (1)(c);
- (c) by deleting the words “in any securities or futures contract or class of securities or futures contracts” in subsection (2)(a); and
- 15 (d) by deleting the words “clearing and settlement of transactions in securities or futures contracts or any class of securities or futures contracts” in subsection (2)(b) and substituting the words “arrangements for the clearing or settlement of any transaction or class of transactions”.

### **Amendment of section 66**

- 20 **31.** Section 66(1) of the principal Act is amended by deleting the words “in securities or futures contracts” in paragraph (c).

### **Amendment of section 83**

**32.** Section 83(2) of the principal Act is amended by deleting the words “by regulation” in paragraph (b).

### **Amendment of section 84**

**33.** Section 84 of the principal Act is amended —

- (a) by deleting subsections (4) and (5) and substituting the following subsections:
- 30 “(4) An application for the grant of a representative’s licence in respect of any regulated activity shall be supported in the prescribed manner by such person, who is the holder of or who

has applied for a capital markets services licence for that regulated activity, as may be specified by the Authority.

5 (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.

10 (5A) An application for the grant 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 —

- (a) withdraws his support in writing;
- (b) withdraws his application for a capital markets services licence in respect of that regulated activity; or
- 15 (c) has his application for a capital markets services licence in respect of that regulated activity refused by the Authority.

20 (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.”; and

(b) by inserting, immediately after subsection (7), the following subsection:

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

### **Amendment of section 86**

**34.** Section 86 of the principal Act is amended —

- 30 (a) by deleting the words “such other person having the powers and duties of a receiver, receiver and manager or judicial manager,” in subsection (4)(d) and substituting the words “an equivalent person”; and

- (b) by deleting subsection (6) and substituting the following subsection:

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

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

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

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

### **Amendment of section 87**

**35.** Section 87 of the principal Act is amended —

(a) by deleting the words “A natural person” in subsection (1) and substituting the words “An individual”;

(b) by deleting the words “the principal who” in subsection (2)(b) and substituting the words “the holder of a capital markets services licence which”;

(c) by deleting the words “his principal” in subsection (3)(h) and substituting the words “a holder of a capital markets services licence”; and

(d) by deleting subsection (5) and substituting the following subsections:

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

- (a) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere;
  - (b) the applicant has been convicted, whether in Singapore or elsewhere, of an offence —
    - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
    - (ii) punishable with imprisonment for a term of 3 months or more.
- (6) In this section, “representative’s licence” does not include a temporary representative’s licence.”.

#### **New section 87A**

**36.** The principal Act is amended by inserting, immediately after section 87, the following section:

#### **“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 to carry on business in one or more regulated activities.

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

(3) An application for the grant 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.

(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.

(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.

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

- 5           (a) if the applicant has held a temporary representative's licence for a period which exceeds, or for periods which together exceed, the prescribed number of months within the prescribed period; or
- 10           (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.

15           (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
- 20           (b) shall relate the licence to the holder of a capital markets services licence which supported that application for a temporary representative's licence.

25           (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.

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

              (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).

30           (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.

(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:

- 5 (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 —
  - 10 (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.”.

#### **Amendment of section 89**

15 **37.** Section 89 of the principal Act is amended by inserting, immediately after subsection (2), the following subsection:

- “(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.”.

#### **Amendment of section 90**

**38.** Section 90 of the principal Act is amended —

- (a) by deleting the word “its” in subsection (1) and substituting the word “his”;
- 25 (b) by inserting, immediately after subsection (1), the following subsection:
 

“(1A) The Authority may require an applicant to supply the Authority with such information or documents as it considers necessary in relation to the application.”;
- 30 (c) by deleting subsection (2) and substituting the following subsections:

“(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

5 (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

10 (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.

15 (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 —

(a) withdraws its support in writing;

20 (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.”;

(d) by deleting paragraph (b) of subsection (3) and substituting the following paragraph:

25 “(b) refuse the application on any of the grounds set out in section 86(4), 87(3) or 87A(10).”; and

(e) by inserting, immediately after subsection (3), the following subsection:

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

### **Amendment of section 93**

**39.** Section 93(2) of the principal Act is amended by deleting the words “immediately return the licence to the Authority” and substituting the words “return the licence to the Authority within 14 days of the date of the cessation”.

### **Amendment of section 95**

**40.** Section 95 of the principal Act is amended —

(a) by inserting, immediately after the words “section 87” in subsection (2)(b)(i), the words “or 87A (as the case may be)”;  
and

(b) by deleting subsection (5) and substituting the following subsection:

“(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 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.”.

### **Amendment of section 96**

41. Section 96 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

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

(a) its chief executive officer;

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

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

unless it has obtained the approval of the Authority.

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

(b) by deleting subsection (4) and substituting the following subsection:

“(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.”.

#### **Amendment of section 97**

**42.** Section 97 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(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.”.

### **Amendment of section 99**

**43.** Section 99(1) of the principal Act is amended by deleting the words “as may be prescribed” in paragraph (h) and substituting the words “as may be exempted by the Authority”.

### **Amendment of section 100**

**44.** Section 100 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Regulations made under this section may provide —

- (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.”.

### **Amendment of section 101**

**45.** Section 101(2) of the principal Act is amended —

- (a) by deleting the word “and” at the end of paragraph (a); and
- (b) by deleting the comma at the end of paragraph (b) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:
  - “(c) the qualifications, experience and training of representatives,”.

### **New section 103A**

**46.** The principal Act is amended by inserting, immediately above section 104, the following section:

#### **“Interpretation of this Division**

**103A.** In this Division, unless the context otherwise requires, “money or other assets” means money received or retained by, or any other asset deposited with, a holder of a capital markets services

licence in the course of its business for which it is liable to account to its customer, and any money or other assets accruing therefrom.”.

#### **Amendment of section 104**

**47.** Section 104 of the principal Act is amended —

- 5       (a) by inserting, immediately after the words “other assets from” in subsection (1), the words “or on account of”; and
- (b) by deleting subsection (3).

#### **New section 104A**

10       **48.** The principal Act is amended by inserting, immediately after section 104, the following section:

##### **“Non-availability of customer money and other assets for payment of debt**

15       **104A.** Except as otherwise provided in this Part or the regulations made thereunder, all money or other assets received from or on account of customers or deposited in the manner prescribed under section 104(1)(b) —

- (a) shall not be available for payment of the debts of the holder of a capital markets services licence; and
- 20       (b) shall not be liable to be paid or taken in execution under an order or a process of any court.”.

#### **Amendment of section 120**

**49.** Section 120 of the principal Act is amended —

- (a) by deleting subsection (7); and
- 25       (b) by deleting the words “duly signed in accordance with subsection (7) for 7 years” in subsection (8) and substituting the words “for 6 years”.

#### **Amendment of section 123**

**50.** Section 123 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:



“(4) Regulations made under this section may provide —

- (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.”.

## 10 **Amendment of section 125**

**51.** Section 125 of the principal Act is amended —

- (a) by deleting subsections (1), (2) and (3) and substituting the following subsections:

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

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

- (b) by inserting, immediately after subsection (8), the following subsection:

“(9) For the purposes of this section —

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

- (i) a person associated with or connected to the holder;
- (ii) a corporation in which the holder has a controlling interest; or
- 5 (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 —
- 10 (i) a securities exchange;
- (ii) an overseas securities exchange; or
- (iii) a recognised trading system provider.”.

#### **Amendment of section 131**

- 15 **52.** Section 131(2) of the principal Act is amended by inserting, immediately after the words “enter in the register” in paragraph (a), the words “, within 7 days after the date of the change,”.

#### **Amendment of section 146**

- 20 **53.** Section 146(1) of the principal Act is amended by deleting the words “a document or other material” and substituting the word “information”.

#### **Amendment of section 153**

- 54.** Section 153 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

- “(3) Nothing in this Division shall —
- 25 (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
- 30 which is in his possession.”.

### **Amendment of section 224**

**55.** The principal Act is amended by renumbering section 224 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

- 5       “(2) Sections 218(2) and 219(2) shall not apply in respect of the sale of securities pursuant to any requirement imposed by the Government or any requirement imposed under any written law or order of court.”.

### **Amendment of section 239**

10       **56.** Section 239 of the principal Act is amended —

- (a) by inserting, immediately after the words “as in” in the definition of “guarantor corporation” in subsection (1), the words “section 4(1) of”;
- (b) by deleting the words “sections 243 and 244, where applicable” in the definition of “preliminary document” in subsection (1) and substituting the words “section 243”;
- (c) by deleting the words “256 or” in the definition of “prospectus” in subsection (1);
- (d) by deleting the definition of “trustee corporation” in subsection (1);
- (e) by deleting the words “(not being a prescribed corporation)” in subsection (3)(a) and (b);
- (f) by inserting, immediately after the words “lent to the corporation” in subsection (3)(b), the words “or other entity”;
- (g) by inserting, immediately after subsection (3), the following subsection:

      “(3A) Notwithstanding subsection (3) —

- (a) any invitation to the public by a prescribed corporation to deposit money with or to lend money to the prescribed corporation is not an offer to the public for subscription or purchase, or invitation to the public to subscribe for or purchase, debentures of the prescribed corporation; and

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

(i) any certificate of deposit;

(ii) any other document acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the prescribed corporation in respect of any money that is or may be deposited with or lent to the prescribed corporation.”;

(h) by deleting the words “subsection (3)” in subsection (4) and substituting the words “subsection (3A)”; and

(i) by inserting, immediately after the words “prescribed corporation” in subsection (4)(b), the words “for the purposes of this subsection”.

#### **New section 239A**

**57.** The principal Act is amended by inserting, immediately after section 239, the following section:

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

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

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

(b) the Authority has by order published in the *Gazette* declared that this Division shall not apply to that offer or invitation or a class of offers or invitations to which that offer or invitation belongs,

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

### **Amendment of section 240**

**58.** Section 240 of the principal Act is amended —

- (a) by deleting the words “sections 243 and 244, where applicable” in subsection (1)(a)(i) and substituting the words “section 243”;
- 5 (b) by inserting, immediately after the words “as may be prescribed” in subsection (1)(b), the words “by the Authority”;
- (c) by deleting the words “sections 243 and 244, where applicable” in subsection (4)(a) and substituting the words “section 243”;
- 10 (d) by inserting, immediately after the words “as may be prescribed” in subsection (4)(e), the words “by the Authority”;
- (e) by deleting the words “sections 243 and 244” in subsection (9) and substituting the words “section 243”;
- (f) by inserting, immediately after the words “shall be deemed” in subsection (10)(a), the words “for the purposes of subsection (8)”;
- 15 (g) by inserting, immediately after the words “shall be deemed” in subsection (10)(b), the words “for the purposes of subsection (8)”;
- 20 (h) by deleting the words “it shall be treated as part of the original prospectus or profile statement” in subsection (11) and substituting the words “the prospectus or profile statement as amended shall be deemed for the purposes of subsection (8) to have been lodged when the original prospectus or profile statement was lodged with the Authority”;
- 25 (i) by inserting, immediately after subsection (11), the following subsection:  
 “(11A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.”;
- 30 (j) by deleting subsection (12) and substituting the following subsection:

“(12) The Authority may, for public information, publish —

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

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

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

(k) by deleting the words “or 244” in subsection (13)(b);

(l) by deleting the word “him” in subsection (13)(c) and substituting the words “the director or proposed director”;

(m) by deleting the word “him” in subsection (14)(c) and substituting the words “the director or proposed director”;

(n) by deleting paragraphs (b) and (d) of subsection (15);

(o) by deleting the words “, a judicial manager” in subsection (15)(c); and

(p) by deleting the semi-colon at the end of subsection (15)(c) and substituting a full-stop.

### **Amendment of section 241**

**59.** Section 241 of the principal Act is amended —

(a) by deleting the words “or 244” in subsection (1)(b) and (c)(ii)(A); and

(b) by deleting subsections (5) and (6) and substituting the following subsections:

“(5) The person who lodges a supplementary document or the corporation concerned shall take reasonable steps to inform potential investors of such lodgment and make available the supplementary document to them.

(6) For the purposes of the application of this Division to events that occur after the lodgment of the supplementary document —

5           (a) where the supplementary document is a supplementary prospectus, the prospectus shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus; and

10           (b) where the supplementary document is a supplementary profile statement, the profile statement shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement.

15           (6A) The person who lodges a replacement document or the corporation concerned shall take reasonable steps to inform potential investors of such lodgment and make available the replacement document to them.

20           (6B) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

            (a) where the replacement document is a replacement prospectus, the prospectus shall be taken to be the replacement prospectus; and

25           (b) where the replacement document is a replacement profile statement, the profile statement shall be taken to be the replacement profile statement.”.

### **Amendment of section 242**

**60.** Section 242 of the principal Act is amended —

30           (a) by deleting subsections (1) and (2) and substituting the following subsections:

            “(1) If a prospectus has been registered and —

            (a) the Authority is of the opinion that the prospectus contains a false or misleading statement or matter;

- (b) there is an omission from the prospectus of any information that is required to be included in it under section 243;
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

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

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

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

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

- (b) by deleting subsection (4) and substituting the following subsection:

“(4) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person who lodged the prospectus or profile statement an opportunity to be heard,



except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

- 5           (a) the corporation whose shares or debentures, or units of shares or debentures are the subject of the offer or invitation to which the prospectus or profile statement relates is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- 10          (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of that corporation.”; and
- 15          (c) by inserting, immediately after the words “unless revoked” in subsection (9), the words “by the Authority”.

#### **Repeal of section 244**

**61.** Section 244 of the principal Act is repealed.

#### **Amendment of section 245**

20       **62.** Section 245(2) of the principal Act is amended by inserting, immediately after the words “where a corporation or”, the word “other”.

#### **Amendment of section 247**

**63.** Section 247 of the principal Act is amended —

- (a) by deleting subsections (1) to (4) and substituting the following subsections:
  - 25           “(1) The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.
  - 30           (2) The Authority shall not grant an exemption under subsection (1) unless it is of the opinion that —

(a) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or

5 (b) it would not be prejudicial to the public interest if the requirement in respect of which exemption has been applied for were dispensed with.

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

(b) by deleting subsection (6).

#### **Amendment of section 249**

**64.** Section 249 of the principal Act is amended —

15 (a) by deleting the words “this section” in subsection (2) and substituting the words “subsection (1)”; and

(b) by inserting, immediately after subsection (2), the following subsections:

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

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

#### **Amendment of section 252**

30 **65.** Section 252(1) of the principal Act is amended —

(a) by deleting the words “during the application period” and substituting the words “at any time after the prospectus or profile

statement is registered by the Authority but before the close of the offer or invitation”;

(b) by deleting paragraph (b) and substituting the following paragraph:

5 “(b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or”; and

10 (c) by deleting the words “or 244, or” in paragraph (c)(ii) and substituting the words “, or required”.

### **Amendment of section 253**

**66.** Section 253(1) of the principal Act is amended —

15 (a) by inserting, immediately after the words “misleading statement” in paragraph (a), the words “or matter”; and

(b) by deleting the words “or 244” in paragraphs (b) and (c)(ii).

### **Amendment of section 254**

**67.** Section 254(1) of the principal Act is amended by deleting paragraphs (b) and (c) and substituting the following paragraphs:

20 “(b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or

25 (c) there is an omission to state a new circumstance that —

(i) has arisen since the prospectus or the profile statement was lodged with the Authority; and

30 (ii) would have been required by section 243 to be included in the prospectus, or required to be included in the profile statement under section 246, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (3) shall be liable to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission.”.

### **Amendment of section 256**

**68.** Section 256 of the principal Act is amended —

(a) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:

“(b) an application has been or will be made for permission for the shares or debentures, or units of shares or debentures, to be listed for quotation on any securities exchange.”;

(b) by deleting subsections (2), (3) and (4) and substituting the following subsections:

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

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

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

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

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

- 5           (a) a reference in section 249 to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment;
  - (b) a reference in section 250 to the date of registration of a prospectus shall be read as a reference to the date of lodgment of the offer information statement; and
  - 10          (c) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 shall be read as a reference to any information prescribed under subsection (2).
- (7) Where the written consent of an expert to the issue of an offer information statement is required to be given under section 249 (as applied in relation to that statement under subsection (5)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.”; and
- 20          (c) by deleting the words “Abridged prospectus” in the section heading and substituting the words “Offer information statement”.

#### **Amendment of section 257**

**69.** Section 257 of the principal Act is amended —

- 25          (a) by deleting the words “units of any” in subsection (1) and substituting the words “any units of”; and
- (b) by inserting, immediately after the words “in respect of” in subsection (5)(a), the word “the”.

#### **Amendment of section 259**

30          **70.** Section 259 of the principal Act is amended —

- (a) by inserting, immediately after the words “this section” in subsection (3), the words “; and the Authority shall give notice of such exemption in the *Gazette*”;

- (b) by deleting the words “shares or units of shares” in subsection (6)(b) and substituting the words “shares or debentures, or units of shares or debentures”;
- (c) by deleting the words “under this section” in subsection (7) and substituting the words “from applicants in pursuance of the prospectus”;
- (d) by deleting the words “dealt in or quoted on any securities exchange” in subsection (11)(a) and substituting the words “listed for quotation on the official list of, dealt in or quoted on any securities exchange”; and
- (e) by deleting the words “dealing in or quoting the shares or debentures, or units of shares or debentures, on any securities exchange” in subsection (11)(b) and substituting the words “listing for quotation on the official list of, dealing in or quoting the shares or debentures, or units of shares or debentures on, any securities exchange”.

#### **Amendment of section 261**

**71.** Section 261 of the principal Act is amended —

- (a) by deleting the word “This” in subsection (1) and substituting the words “Subject to subsection (1A), this”; and
- (b) by inserting, immediately after subsection (1), the following subsections:

“(1A) Sections 268, 269 and 270 shall not apply if the borrowing corporation is a prescribed corporation.

(1B) In subsection (1A), “prescribed corporation” means —

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

(1C) The Authority may, at any time by notice in writing, vary or revoke any condition or restriction imposed under subsection (1B).”.

### **Repeal of sections 262, 263 and 264**

5     **72.** Sections 262, 263 and 264 of the principal Act are repealed.

### **Amendment of section 266**

**73.** Section 266 of the principal Act is amended by deleting subsection (1).

### **New section 267A**

10     **74.** The principal Act is amended by inserting, immediately after section 267, the following section:

#### **“Right of Authority, securities exchange and holders of debentures to apply to court for order**

15     **267A.** Without prejudice to any other right of action or remedy in any written law or rule of law, a holder of debentures, the Authority or a securities exchange (in a case where the debentures are quoted or listed for quotation on that securities exchange) may apply to the court for an order to compel the trustee for the holders of such debentures to perform his duties as set out in the trust deed relating to  
20     those debentures, and the court may either make the order on such terms as it considers appropriate, or dismiss the application.”.

### **Amendment of section 270**

**75.** Section 270(1) of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

25     “(1) Where there is, in any prospectus issued in connection with an offer or invitation in respect of debentures, a statement as to any particular purpose or project for which the moneys received by the borrowing corporation in response to the invitation are to be applied, the borrowing corporation shall, where there is a trustee for the  
30     holders of those debentures, from time to time make reports to the trustee as to the progress that has been made towards achieving such purpose or completing such project.”.

### **Repeal and re-enactment of sections 273 and 274**

76. Sections 273 and 274 of the principal Act are repealed and the following sections substituted therefor:

#### **“Offer or invitation made under certain circumstances**

5       **273.**—(1) Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures or units of shares or debentures, if —

- (a) it is made in connection with a take-over offer which is in compliance with the Take-over Code;
- 10       (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 —

- 15               (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,

20       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;

- 25       (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,

30       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;



(d) it is an offer or invitation in respect of shares or debentures that have been previously issued and are listed for quotation or quoted on a securities exchange;

(e) it is an offer or invitation in respect of units of shares or debentures where —

(i) the units of shares or debentures have been previously issued and are listed for quotation or quoted on a securities exchange; or

(ii) an application has been or will be made for permission for the units of shares or debentures to be listed for quotation or quoted on a securities exchange and the shares or debentures have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange; or

(f) it is made (whether or not in relation to shares or debentures or units of shares or debentures that have been previously issued) by a corporation to a qualifying person where the shares or debentures or units of shares or debentures are to be held by or for the benefit of the qualifying person in accordance with a share investment offer or scheme (including a share option offer or scheme) for the time being in force.

(2) Subsection (1)(f) shall only apply if no selling or promotional expenses are paid or incurred in connection with the share investment offer or scheme, other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.

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

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

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

- (a) the cost of providing a prospectus for an offer or invitation in respect of shares, debentures or units of shares or debentures outweighs the resulting protection to investors; or
- (b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer or invitation in respect of shares, debentures or units of shares or debentures,

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

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

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

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

(9) In subsection (1)(b) and (c), “corporation” excludes —

- (a) a company; and
- (b) a corporation whose shares or debentures, or units of shares or debentures, are listed for quotation on a securities exchange.

**Offer or invitation made to certain institutions or persons**

274. Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures, or units of shares or debentures, whether or not they have been previously issued, made to —

- (a) a bank that is licensed under the Banking Act (Cap. 19);
- (b) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (c) a finance company licensed under the Finance Companies Act (Cap. 108);
- (d) a company or society registered under the Insurance Act (Cap. 142) as an insurer;
- (e) a company registered under the Trust Companies Act (Cap. 336);
- (f) the Government or a statutory body;
- (g) a pension fund or collective investment scheme;
- (h) the holder of a capital markets services licence for —
  - (i) dealing in securities;
  - (ii) fund management;
  - (iii) providing custodial services for securities;
  - (iv) securities financing; or
  - (v) trading in futures contracts;
- (i) a person which carries on the business of dealing in bonds with —
  - (i) accredited investors; or
  - (ii) persons whose business involves the acquisition and the disposal or holding of securities (whether as principal or agent); or

- (j) any other person who has been declared by the Authority as an exempt purchaser or is within a class of persons declared by the Authority as exempt purchasers.”.

## Amendment of section 275

5      **77.** Section 275(2) of the principal Act is amended —

- (a) by deleting the definition of “information memorandum” and substituting the following definition:

“ ‘information memorandum’ means a document —

- (a) purporting to describe the business and affairs  
of—

- (i) the corporation whose shares, debentures or units of shares or debentures are the subject of the offer or invitation;

- (ii) the person making the offer or invitation; or

- (iii) both; and

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

- (b) by inserting, immediately after the word “corporation” in the last line of paragraph (b)(ii) of the definition of “sophisticated investor”, the words “, or (if the corporation is not required to prepare audited accounts) a balance-sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance-sheet, which is a date that is no earlier than 12 months before the date on which the offer or invitation is made to the corporation”; and

- (c) by deleting the words “a natural person” in paragraph (c) of the definition of “sophisticated investor” and substituting the words “an individual”.

### **Amendment of section 276**

**78.** Section 276 of the principal Act is amended by deleting subsections (3) and (4) and substituting the following subsections:

5 “(3) Subsection (2) shall not apply if at least 6 months have elapsed from the date the shares, debentures or units of shares or debentures to which the offer or invitation relates were initially acquired pursuant to the exemption under section 274 or 275.

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

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

### **20 Repeal and re-enactment of section 277**

**79.** Section 277 of the principal Act is repealed and the following section substituted therefor:

#### **“Securities exchange offer or invitation**

**277.—**(1) Where —

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

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

Subdivisions (2) and (3) of this Division shall not apply to the offer or invitation for a period of 6 months from the date of lodgment of the offer information statement.

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

(3) For the purposes of this section —

(a) shares shall be deemed to be uniform in all respects with shares previously issued notwithstanding that they do not carry the same rights to dividends as the latter during the 12 months immediately following the issue; and

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

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

(a) a reference in section 249 to the delivery of a copy of the prospectus for registration shall be read as a reference to the delivery of a copy of the offer information statement for lodgment; and

(b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 shall be read as a reference to any information prescribed under subsection (1)(b).

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

## **Repeal of section 280**

**80.** Section 280 of the principal Act is repealed.

### **Amendment of section 281**

**81.** Section 281(1) of the principal Act is amended by deleting the words “section 273(4)” and substituting the words “section 273(6)”.

### **Amendment of section 283**

5     **82.** Section 283(1) of the principal Act is amended —

(a) by deleting the words “and which” in paragraph (b) of the definition of “prospectus” and substituting the words “or which”; and

10     (b) by deleting the definition of “responsible person” and substituting the following definition:

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

15     (a) in the case of a scheme which is authorised under section 286 or for which an application for authorisation has been made under that section, the manager for the scheme;

(b) in the case of a scheme which is recognised under section 287 or for which an application for recognition has been made under that section —

20     (i) where the scheme is constituted as a corporation, the corporation;

(ii) where the scheme is not constituted as a corporation, the manager for the scheme;”.

### **New section 284A**

25     **83.** The principal Act is amended by inserting, immediately after section 284, the following section:

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

30     **284A.** Notwithstanding any provision to the contrary in this Division, where —

(a) an offer to the public of, or an invitation to the public to subscribe for or purchase, units in a collective investment scheme is one to which (but for this section) both this Division and Division 1 apply; and

5 (b) the Authority has by order published in the *Gazette* declared that this Division shall not apply to that offer or invitation or a class of offers or invitations to which that offer or invitation belongs,

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

#### 10 **Amendment of section 286**

**84.** Section 286 of the principal Act is amended —

(a) by deleting sub-paragraphs (i) to (vi) of subsection (3)(b) and substituting the following sub-paragraphs:

15 “(i) any person who is or will be employed by or associated with the manager;

(ii) any person exercising influence over the manager; or

(iii) any person exercising influence over a related corporation of the manager.”;

(b) by deleting paragraphs (b) and (d) of subsection (6);

20 (c) by deleting the words “, a judicial manager” in subsection (6)(c); and

(d) by deleting the semi-colon at the end of subsection (6)(c) and substituting a full-stop.

#### **Amendment of section 287**

25 **85.** Section 287 of the principal Act is amended —

(a) by deleting sub-paragraphs (i) to (vi) of subsection (3)(b) and substituting the following sub-paragraphs:

“ (i) any person who is or will be employed by or associated with the manager;

30 (ii) any person exercising influence over the manager; or



(iii) any person exercising influence over a related corporation of the manager; and”;

(b) by deleting paragraphs (b) and (d) of subsection (5);

(c) by deleting the words “, a judicial manager” in subsection (5)(c);

5 (d) by deleting the semi-colon at the end of subsection (5)(c) and substituting a full-stop; and

(e) by inserting, immediately after subsection (13), the following subsections:

10 “(13A) In carrying out or procuring the carrying out of the functions referred to in subsection (13), the representative shall ensure that —

15 (a) for the purposes of subsection (13)(a)(ii), the sale and purchase prices of units in the collective investment scheme are published in the language of the prospectus;

20 (b) for the purposes of subsection (13)(a)(iii), the reports of the scheme sent to participants are prepared in the language of the prospectus, except in relation to any participant who has consented to being sent a report in a language other than the language of the prospectus;

25 (c) for the purposes of subsection (13)(a)(v), if the instruments constituting the scheme are not in the language of the prospectus, an accurate translation of the instruments in the language of the prospectus is made available to a participant for inspection, unless the participant has consented to the making available to him for inspection of the instruments in a language other than the language of the prospectus; and

30 (d) for the purposes of subsection (13)(b), if the subsidiary register of participants or equivalent information is not in the language of the prospectus, an accurate translation of the register or equivalent information in the language of the prospectus is made available to a participant for inspection or extraction, unless the participant has consented to the making

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available to him for inspection or extraction of the register or equivalent information in a language other than the language of the prospectus.

(13B) In subsection (13A), “language of the prospectus” means the language of the prospectus accompanying or making the offer of units in the collective investment scheme to the public for subscription or purchase or the invitation to the public to subscribe for or purchase units in the collective investment scheme.

(13C) Section 318A(2) shall not apply to the instruments constituting the scheme referred to in subsection (13)(a)(v) or to the subsidiary register of participants or equivalent information referred to in subsection (13)(b).”.

#### **Amendment of section 288**

**86.** Section 288 of the principal Act is amended —

(a) by inserting, immediately after paragraph (a) of subsection (1), the following paragraph:

“(aa) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be against the public interest;” and

(b) by inserting, immediately after subsection (8), the following subsections:

“(8A) The Authority shall not —

(a) revoke the authorisation or recognition of a collective investment scheme under subsection (1);

(b) suspend the authorisation or recognition of a collective investment scheme under subsection (5); or

(c) refuse the withdrawal of the authorisation or recognition of a collective investment scheme under subsection (8),

without giving the responsible person of the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the revocation or suspension is on the

ground that the continued authorisation or recognition of the scheme is against the public interest on the basis of any of the following circumstances:

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

(8B) Any person who is aggrieved by the revocation under subsection (1), suspension under subsection (5) or refusal of withdrawal under subsection (8) may, within 30 days after he is notified of the decision of the Authority, appeal to the Minister  
15 whose decision shall be final.”.

### **Amendment of section 296**

**87.** Section 296 of the principal Act is amended —

- (a) by inserting, immediately after the words “shall be deemed” in subsection (7)(a), the words “for the purposes of subsection (6)”;
- 20 (b) by inserting, immediately after the words “shall be deemed” in subsection (7)(b), the words “for the purposes of subsection (6)”;
- (c) by deleting the words “it shall be treated as part of the original prospectus or profile statement” in subsection (8) and substituting the words “the prospectus or profile statement as  
25 amended shall be deemed for the purposes of subsection (6) to have been lodged when the original prospectus or profile statement was lodged with the Authority”;
- (d) by inserting, immediately after subsection (8), the following subsection:  
30 “(8A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.”;
- (e) by deleting subsection (9) and substituting the following subsection:

“(9) The Authority may, for public information, publish —

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

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

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

(f) by deleting the word “him” in subsection (10)(d)(i) and substituting the words “the director or proposed director”;

15 (g) by deleting paragraphs (b) and (d) of subsection (12);

(h) by deleting the words “, a judicial manager” in subsection (12)(c); and

(i) by deleting the semi-colon at the end of subsection (12)(c) and substituting a full-stop.

## 20 **Amendment of section 297**

**88.** Section 297 of the principal Act is amended by deleting subsections (1), (2) and (3) and substituting the following subsections:

“(1) If a prospectus has been registered and —

25 (a) the Authority is of the opinion that the prospectus contains a false or misleading statement or matter;

(b) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under section 296;

30 (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or

(d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by an order in writing (referred to in this section as a stop order) served on the responsible person for the scheme, direct that no or no further units in a collective investment scheme to which the prospectus relates be issued or sold.

- 5 (2) If a profile statement has been registered and —
- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement or matter;
  - (b) there is an omission from the profile statement of any information that is required to be included, or an inclusion in  
10 the profile statement of any information that is prohibited, by virtue of requirements prescribed under section 296;
  - (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or
  - (d) the Authority is of the opinion that it is in the public interest  
15 to do so,

the Authority may by an order in writing (referred to in this section as a stop order) served on the responsible person for the scheme, direct that no or no further units in a collective investment scheme to which the profile statement relates be issued or sold.

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

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

### **Amendment of section 300**

**89.** Section 300(1) of the principal Act is amended by deleting the words “and complies” and substituting the words “or complies”.

### **Amendment of section 301**

**90.** Section 301 of the principal Act is amended —

- (a) by deleting the words “under this section” in subsection (7) and substituting the words “from applicants as payment for the units, including contributions to the scheme and charges which the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units,”;
- (b) by deleting the words “dealt in or quoted on any securities exchange” in subsection (11)(a) and substituting the words “listed for quotation on the official list of, dealt in or quoted on any securities exchange”; and
- (c) by deleting the words “dealing in or quoting units on any securities exchange” in subsection (11)(b) and substituting the words “listing for quotation on the official list of, dealing in or quoting the units on any securities exchange”.

### **Repeal and re-enactment of section 304 and new section 304A**

**91.** Section 304 of the principal Act is repealed and the following sections substituted therefor:

#### **“Offer or invitation made to certain institutions or persons**

**304.** Subdivisions (2) and (3) of this Division shall not apply to an offer to the public of units in a collective investment scheme for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, made to —

- (a) a bank that is licensed under the Banking Act (Cap. 19);
- (b) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (c) a finance company licensed under the Finance Companies Act (Cap. 108);
- (d) a company or society registered under the Insurance Act (Cap. 142) as an insurer;
- (e) a company registered under the Trust Companies Act (Cap. 336);

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

### **First sale of units acquired under exemption in section 304**

20 **304A.**—(1) Subject to subsection (2), where units in a collective investment scheme initially acquired pursuant to an exemption in section 304 are first sold to any person other than one specified in that section, the offer for sale of, or invitation to purchase, those units made to that person shall be regarded as an offer or invitation to the public in respect of units in a collective investment scheme.

25 (2) Where units in a collective investment scheme initially acquired pursuant to an exemption in section 304 are first sold to any sophisticated investor, section 305 shall apply to the offer for sale of, or invitation to purchase, those units made to that sophisticated investor as if it were an offer to the public of units in a collective investment scheme for subscription or purchase, or an invitation to  
30 the public to subscribe for or purchase units in a collective investment scheme, made to a sophisticated investor.

(3) In subsection (2), “sophisticated investor” has the same meaning as in section 305.”.

### **Amendment of section 305**

**92.** Section 305 of the principal Act is amended —

- 5 (a) by inserting, immediately after the words “an offer” in subsection (1), the words “to the public”;
- (b) by inserting, immediately after the words “an invitation” in subsection (1), the words “to the public”;
- (c) by inserting, at the end of subsection (1)(ii), the word “and”;
- 10 (d) by deleting the word “; and” at the end of subsection (1)(iii)(B) and substituting a full-stop;
- (e) by deleting paragraph (iv) of subsection (1);
- (f) by deleting the words “lodged with the Authority” in the definition of “information memorandum” in subsection (3);
- 15 (g) by inserting, immediately after the word “corporation” in the last line of paragraph (b)(ii) of the definition of “sophisticated investor” in subsection (3), the words “, or (if the corporation is not required to prepare audited accounts) a balance-sheet of the corporation certified by the corporation as giving a true and fair
- 20 view of the state of affairs of the corporation as of the date of the balance-sheet, which is a date that is no earlier than 12 months before the date on which the offer or invitation is made to the corporation”; and
- 25 (h) by deleting the words “a natural person” in paragraph (c) of the definition of “sophisticated investor” in subsection (3) and substituting the words “an individual”.

### **New section 305A**

**93.** The principal Act is amended by inserting, immediately after section 305, the following section:

#### **“First sale of units acquired under exemption in section 305**

**305A.** Where units in a collective investment scheme initially acquired pursuant to an exemption in section 305 are first sold to any



person other than one specified in section 304 or 305, the offer for sale of, or invitation to purchase, those units made to that person shall be regarded as an offer or invitation to the public in respect of units in a collective investment scheme.”.

5 **Amendment of section 309**

**94.** Section 309 of the principal Act is amended —

- (a) by deleting the words “, by order published in the *Gazette*,” in subsection (3);
- 10 (b) by deleting the words “specified in the order” in subsection (3) and substituting the words “determined by the Authority”; and
- (c) by deleting paragraph (a) of subsection (7) and substituting the following paragraph:
  - 15 “(a) “securities” has the same meaning as in section 2 and also includes the securities of a corporation, whether the corporation is in existence or is to be formed;”.

**Amendment of section 310**

**95.** Section 310(2) of the principal Act is amended by deleting the words “2 members” and substituting the words “3 members”.

**Amendment of section 311**

- 20 **96.** Section 311(2) of the principal Act is amended by inserting, immediately after the words “2 years”, the words “and shall be eligible for re-appointment”.

**Repeal and re-enactment of section 313**

- 25 **97.** Section 313 of the principal Act is repealed and the following section substituted therefor:

**“Regulations for purposes of this Part**

**313.—**(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.

- 30 (2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under this Act shall be made;
- 5 (c) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;
- (d) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- 10 (e) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.”.

#### **Amendment of section 315**

- 15 **98.** Section 315 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

20 “(1) Every exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5(3) or 6(3) and clearing house, and every officer or employee thereof, shall preserve, and aid in preserving, secrecy with respect to all matters of the exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5(3) or 6(3) or clearing house, as the case may be.”.

#### **New section 318A**

- 25 **99.** The principal Act is amended by inserting, immediately after section 318, the following section:

##### **“Translation of instruments**

30 **318A.**—(1) Where a person submits or furnishes to or lodges with the Authority any book, application, return, report, prospectus, statement or other information or document under this Act (other than Subdivision 3 of Division 3 of Part IX) which is not in the English language, the person shall, at the same time or at such other time as

may be permitted by the Authority, submit or furnish to or lodge with the Authority, as the case may be, an accurate translation thereof in the English language.

5 (2) Where a person is required to make available for inspection by the public, or any section thereof, any document, report, or other book under this Act which is not in the English language, the person shall, at the same time or at such other time as may be permitted by the Authority, make available for such inspection an accurate translation thereof in the English language.

10 (3) Where a person is required to maintain or keep any book under this Act and the book or any part thereof is not maintained or kept in the English language, the person shall —

(a) cause an accurate translation of that book or that part of the book in the English language to be made from time to time at intervals of not more than 7 days; and

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(b) maintain or keep the translation with the book for so long as the book is required under this Act to be maintained or kept.

(4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made thereunder.

20 (5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(6) Where a person is charged with an offence under subsection (5), it shall be a defence for the person to prove that —

25 (a) he had taken all reasonable steps to ensure that the translation that was submitted or furnished to or lodged with the Authority, made available for inspection, or maintained or kept, as the case may be, was accurate in the circumstances; and

30 (b) he had believed on reasonable grounds that the translation was accurate.

(7) In subsections (1), (2) and (3), “Act” includes any direction made by the Authority under this Act.”.

### **Amendment of section 320**

**100.** Section 320 of the principal Act is amended —

- (a) by deleting the word “The” in subsection (1) and substituting the words “Subject to subsection (1A), the”; and
- 5 (b) by inserting, immediately after subsection (1), the following subsection:

“(1A) The Authority may, by notification published in the *Gazette*, appoint one or more of its officers to exercise the power to grant an exemption to any person or in respect of any capital markets product, matter or transaction (not being an exemption granted to a class of persons or in respect of a class of capital markets products, matters or transactions) under a provision of this Act specified in the Fourth Schedule, or to revoke any such exemption.”.

### **Amendment of section 331**

**101.** Section 331(5) of the principal Act is amended —

- (a) by deleting the words “or person” in paragraph (a) of the definition of “officer” and substituting the words “, and includes a person”; and
- 20 (b) by deleting the words “and members of the committee of the association and includes persons holding positions analogous to those of president, secretary or member of a committee” in paragraph (b) of the definition of “officer” and substituting the words “, or a member of the committee of the association or a person holding a position analogous to that of president,
- 25 secretary or member of a committee, and includes a person purporting to act in any such capacity”.

### **Amendment of section 333**

**102.** Section 333(2) of the principal Act is amended by deleting  
30 “263(7),” in paragraph (a).

### **Amendment of section 334**

**103.** Section 334 of the principal Act is amended —

(a) by inserting, immediately after sub-paragraph (ii) of paragraph (a) of the definition of “misconduct” in subsection (2), the following sub-paragraph:

“(iia) any direction made by the Authority under this Act;”;

(b) by deleting the words “notice, direction,” in paragraph (a)(iii) of the definition of “misconduct” in subsection (2);

(c) by deleting paragraph (b) of the definition of “misconduct” in subsection (2) and substituting the following paragraphs:

“(b) the failure by an officer of a relevant person to discharge any duty or function of his office; or

(c) the commission of an offence under section 331 or 332(1);”;

(d) by inserting, immediately after the definition of “misconduct” in subsection (2), the following definitions:

“ “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” includes a person purporting to act as a partner;”;  
and

- (e) by inserting, immediately after the word “officer” in the definition of “relevant person” in subsection (2), the word “, partner”.

### **Amendment of section 337**

5     **104.** Section 337 of the principal Act is amended —

- (a) by deleting the words “An exemption” in subsection (2) and substituting the words “Subject to any express provision to the contrary in this Act, an exemption”; and
- 10     (b) by inserting, immediately after subsection (2), the following subsections:

“ (3) The Authority may, on the application of any person, by notice in writing exempt the person from all or any of the requirements specified in any direction made by the Authority under this Act.

15     (4) An exemption granted under subsection (3) —

- (a) may be granted subject to such conditions or restrictions as the Authority may specify by notice in writing; and
- 20     (b) for the avoidance of doubt, need not be published in the *Gazette* and may be revoked at any time by the Authority.

(5) Any person who contravenes any condition or restriction imposed under subsection (1) or (4)(a) shall be guilty of an offence.”.

### **Amendment of section 339**

25     **105.** Section 339 of the principal Act is amended —

- (a) by inserting, immediately after subsection (2), the following subsection:

“(2A) For the purposes of an action under section 232 or 234, where a person —

- 5           (a) does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute a contravention of any provision of Part XII; or
- (b) does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore and that act, if carried out in Singapore, would constitute a contravention of any provision of Part XII,
- 10           the act shall be treated as being carried out by that person in Singapore.”; and
- (b) by inserting, immediately after the words “subsection (2)” in subsection (3), the words “or (2A)(b)”.

#### **Amendment of section 340**

- 15       **106.** Section 340(1) of the principal Act is amended by deleting the words “and Third Schedules” and substituting the words “, Third or Fourth Schedule”.

#### **Amendment of section 341**

**107.** Section 341 of the principal Act is amended —

- 20       (a) by deleting paragraph (e) of subsection (2);
- (b) by inserting, immediately after the words “refund and remission” in subsection (2)(s), the words “, whether in whole or in part,”;
- (c) by inserting, immediately after the words “the regulations” in subsection (3), the words “made under this Act”;
- 25       (d) by deleting the word “and” at the end of subsection (3)(a); and
- (e) by deleting paragraph (b) of subsection (3) and substituting the following paragraphs:
  - “(b) may provide that a contravention of any specified provision thereof shall be an offence; and
  - 30           (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.”.

## 5 **Amendment of Second Schedule**

**108.** Part II of the Second Schedule to the principal Act is amended —

- (a) by deleting the words “or purchase of” in paragraph (a) of the definition of “securities financing” and substituting the words “, or the purchase of securities”; and
- 10 (b) by deleting paragraph (ii) of the definition of “securities financing”.

## **Amendment of Third Schedule**

**109.** The Third Schedule to the principal Act is amended —

- 15 (a) by inserting, immediately after the words “section 283” in paragraph 8(1), the words “that is authorised under section 286 or recognised under section 287, as the case may be,”;
- (b) by inserting, immediately after the words “section 283” in paragraph 8(2), the words “that is authorised under section 286 or recognised under section 287, as the case may be,”; and
- 20 (c) by deleting paragraph 9 and substituting the following paragraph:
 

“9. A foreign company whose carrying on of any regulated activity is effected under an arrangement between the foreign company (on the one hand) and its related corporation which is licensed under this Act or exempted under section 99(1)(a), (b), (c) or (d) (on the other hand), where

25 such arrangement is approved by the Authority.”.

## **New Fourth Schedule**

**110.** The principal Act is amended by inserting, immediately after the Third Schedule, the following Schedule:



## “FOURTH SCHEDULE

Section 320(1A)

### SPECIFIED PROVISIONS

1. Section 83(2)(b)
- 5 2. Section 99(1)(h) and (2)
3. Section 120(11)
4. Section 247(1)
5. Section 248(2) and (5)
6. Section 249(3)
- 10 7. Section 251(14)
8. Section 256(4)
9. Section 259(3)
10. Section 274(j)
11. Section 277(2)
- 15 12. Section 300(9)
13. Section 302 (when applying section 247(1) or 249(3))
14. Section 304(j)
15. Section 306(1)
16. Section 309(3)(a)
- 20 17. Section 337(3).”.

### Consequential amendments and transitional provisions

111.—(1) The Minister may, by order published in the *Gazette*, repeal or amend any written law which appears to him unnecessary having regard to the provisions of this Act or to be inconsistent with any provision of this Act.

(2) The Authority may, by regulations, prescribe such transitional and savings provisions in relation to this Act as it may consider necessary or expedient.

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## EXPLANATORY STATEMENT

This Bill seeks to amend the Securities and Futures Act (Cap. 289) —

- (a) to implement the recommendations of the Company Legislation and Regulatory Framework Committee (CLRFC), which was appointed by the Government in December 1999 to undertake a comprehensive review of the company law and regulatory framework in Singapore and recommend a modern company law and regulatory framework for Singapore which accords with global standards and which will promote a competitive economy;
- (b) to introduce a number of policy changes in response to market needs; and
- (c) to fine-tune the Act to improve its overall clarity, consistency and operational efficiency.

Clause 1 relates to the short title and commencement.

Clause 2 amends the long title to expand the scope of the Act to include the regulation of clearing facilities which are not facilities for the clearing or settlement of securities and futures contracts traded on a securities market or futures market, respectively.

Clause 3 amends section 2(1) —

- (a) to expand the definition of “clearing facility” to enable the Authority to regulate prescribed clearing or settlement facilities which are not facilities for the clearing or settlement of securities or futures contracts traded on a securities market or futures market, respectively;
- (b) to amend the definition of “collective investment scheme” to exclude an employee scheme whether or not it is managed by a corporation related to the employer, as well as an employee scheme whose participants include any director, former director, consultant or adviser of the employer (or a corporation related thereto) or relations of such director or former director;
- (c) to redefine “customer” —
  - (i) to include a person with whom a holder of a capital markets services licence, as principal, enters or will enter into transactions in connection with leveraged foreign exchange trading;
  - (ii) to include a person on whose behalf a holder of a capital markets services licence will carry on any regulated activity; and
  - (iii) to restrict the application of the definition of “customer” to Parts IV, V, VI, VII and XV;
- (d) to define “representative’s licence” to include a temporary representative’s licence granted under section 87A; and
- (e) to insert a definition of “subsidiary”.

Clause 4 amends section 5(9) to limit the circumstances in which the Authority may revoke an exemption granted to a person under subsection (3) or (5) without giving the person an opportunity to be heard.

Clause 5 amends section 6(9) to limit the circumstances in which the Authority may revoke an exemption granted to a person under subsection (3) or (5) without giving the person an opportunity to be heard.

Clause 6 amends section 7(4) to enhance the penalties that may be prescribed for the contravention of any regulations made under the section.

Clause 7 amends section 9 to provide for an opportunity to be heard where the Authority refuses an application for approval to be a securities exchange or a futures exchange, and for exceptions thereto.

Clause 8 amends section 12(4) to limit the circumstances in which the Authority may revoke an approval granted to a corporation to be a securities exchange or futures exchange without giving the corporation an opportunity to be heard.

Clause 9 amends section 15 mainly —

- (a) to provide that any issue of shares (whether by way of rights, bonus, share dividend or otherwise) and any payment made by a securities exchange or futures exchange in respect of any shares which the Authority has directed to be transferred or disposed of, will be null and void;
- (b) to require the person to whom any shares are issued or payment made in contravention of the section to return the shares or payment and to require the securities exchange or futures exchange to return any payment received by it for any shares issued in contravention of the section; and
- (c) to enhance the penalties for contravention of the section.

Clause 10 amends section 17 to give the Authority the discretion to allow, on application by a securities exchange or futures exchange, an amendment to the business or listing rules of the securities exchange or futures exchange to take effect before the expiry of the 21 days' notice period that must be given to the Authority.

Clause 11 amends section 22(4) to limit the grounds on which the Authority may direct a securities exchange or futures exchange to remove its officer without giving the securities exchange or futures exchange an opportunity to be heard.

Clause 12 amends section 29 to provide for an opportunity to be heard where the Authority refuses an application for approval to be an exchange holding company and for exceptions thereto.

Clause 13 amends section 30(3) to limit the circumstances in which the Authority may revoke an approval granted to a corporation to be an exchange holding company without giving the corporation an opportunity to be heard.

Clause 14 amends section 33(4) to limit the grounds on which the Authority may direct an exchange holding company to remove its officer without giving the exchange holding company an opportunity to be heard.

Clause 15 amends section 34 mainly —

- (a) to provide that any issue of shares (whether by way of rights, bonus, share dividend or otherwise) and any payment made by an exchange holding company in respect of any shares which the Authority has directed to be transferred or disposed of, will be null and void;
- (b) to require the person to whom any shares are issued or payment made in contravention of the section to return the shares or payment and to require the exchange holding company to return any payment received by it for any shares issued in contravention of the section; and
- (c) to enhance the penalties for contravention of the section.

Clause 16 amends section 36 to provide for an opportunity to be heard where the Authority refuses an application for recognition as a recognised trading system provider and for exceptions thereto.

Clause 17 amends section 40 to limit the circumstances in which the Authority may revoke the recognition granted to a recognised trading system provider without giving the recognised trading system provider an opportunity to be heard.

Clause 18 amends section 44(4) to limit the grounds on which the Authority may direct a recognised trading system provider to remove its officer without giving the recognised trading system provider an opportunity to be heard.

Clause 19 amends section 49(1) to clarify that the definition of “property” applies only in relation to a market charge and market collateral.

Clause 20 amends section 50(7) to limit the circumstances in which the Authority may revoke an exemption granted to any clearing facility or class of clearing facilities under subsection (3) without giving the person to whom an exemption is granted an opportunity to be heard.

Clause 21 amends section 51 —

- (a) to delete the reference to securities and futures contracts in subsection (4)(a) in consequence of the amendment to the definition of “clearing facilities” in section 2 (amended by clause 3); and
- (b) to provide for an opportunity to be heard where the Authority refuses an application for approval to be a clearing house and for exceptions thereto.

Clause 22 amends sections 52 by deleting the references to securities and futures contracts in paragraphs (a) and (b) in consequence of the amendment to the definition of “clearing facilities” in section 2 (amended by clause 3).

Clause 23 amends section 53(2) to enhance the penalties that may be prescribed for the contravention of any regulations made under the section.

Clause 24 amends section 55(4) to limit the circumstances in which the Authority may revoke the approval granted to a clearing house without giving the clearing house an opportunity to be heard.

Clause 25 amends section 57(1) by deleting the references to securities and futures contracts in consequence of the amendment to the definition of “clearing facilities” in section 2 (amended by clause 3).

Clause 26 inserts a new section 57A to require a person to notify and obtain the approval of the Authority before acquiring a substantial shareholding in a clearing house.

Clause 27 amends section 59 —

- (a) to give the Authority the discretion to allow, on application by a clearing house, an amendment to the business rules of the clearing house to take effect before the expiry of the 21 days’ notice period that must be given to the Authority; and
- (b) to delete the reference to securities and futures contracts in subsection (5)(b) in consequence of the amendment to the definition of “clearing facilities” in section 2 (amended by clause 3).

Clause 28 amends section 63 —

- (a) to modify the situations in which the Authority is empowered to issue directions to a clearing house; and
- (b) to delete the references to securities and futures contracts in subsection (2)(a) in consequence of the amendment to the definition of “clearing facilities” in section 2 (amended by clause 3).

Clause 29 amends section 64(4) to limit the grounds on which the Authority may direct a clearing house to remove its officer without giving the clearing house an opportunity to be heard.

Clause 30 amends section 65 by deleting the references to securities and futures contracts in subsections (1) and (2) in consequence of the amendment to the definition of “clearing facilities” in section 2 (amended by clause 3).

Clause 31 amends section 66(1) by deleting the reference to securities and futures contract in consequence of the amendment to the definition of “clearing facilities” in section 2 (amended by clause 3).

Clause 32 amends section 83(2)(b) to allow exemptions from subsection (1) to be granted by notice in writing, in accordance with section 337(2), rather than by regulations.

Clause 33 amends section 84 —

- (a) to differentiate between applications for the grant of, and applications for the renewal of, representative’s licences in relation to the persons required to support the applications and the circumstances under which the applications are deemed to be withdrawn; and
- (b) to exclude its application in relation to temporary representative’s licences (inserted by clause 36).

Clause 34 amends section 86(6) to limit the grounds on which the Authority may refuse an application for the grant or renewal of a capital markets services licence without giving the applicant an opportunity to be heard. The clause also makes a consequential amendment to section 86(4)(d).

Clause 35 amends section 87 —

- (a) to ensure consistency in the usage of the term individual throughout the Act;
- (b) to ensure consistency with the amendments to section 84 in clause 33(a);
- (c) to limit the grounds on which the Authority may refuse an application for the grant or renewal of a representative's licence without giving the applicant an opportunity to be heard; and
- (d) to exclude its application in relation to temporary representative's licences.

Clause 36 inserts a new section 87A to provide for the grant of a temporary representative's licence by the Authority and other related matters.

Clause 37 amends section 89 to exclude its application in relation to temporary representative's licences.

Clause 38 amends section 90 —

- (a) to empower the Authority to require an applicant for the variation of a licence to supply the information or documents which the Authority considers necessary;
- (b) to require an application for the variation of a representative's licence by adding a regulated activity to be supported by a person who is the holder of a capital markets services licence for that regulated activity or the holder of a capital markets services licence which has applied to add to its licence that regulated activity;
- (c) to set out the circumstances under which an application for the variation of a representative's licence is deemed to be withdrawn; and
- (d) to provide a licensed person who has applied to vary his licence an opportunity to be heard when the Authority refuses his application.

Clause 39 amends section 93(2) to extend the period within which licensed persons are required to return their licences, upon ceasing to carry on or to act as a representative in carrying on all regulated activities, to 14 days of the date of cessation.

Clause 40 amends section 95 to limit the grounds on which the Authority may revoke or suspend a licence without giving the licensed person an opportunity to be heard. The clause also amends section 95(2)(b)(i) to provide for the grounds on which a temporary representative's licence may be revoked.

Clause 41 amends section 96 —

- (a) to provide that the prior approval of the Authority is required for the appointment of a chief executive officer, a director who resides in Singapore

or a director (whether or not he resides in Singapore) who is directly responsible for any part of the business, of the holder of a capital markets services licence;

- (b) to clarify that the prior approval of the Authority is not required for the re-appointment of a chief executive officer or a director immediately upon the expiry of the earlier term of office which the Authority has approved; and
- (c) to limit the grounds on which the Authority may refuse an application by a holder of a capital markets services licence for approval to appoint a person as its chief executive officer or director without giving the holder an opportunity to be heard.

Clause 42 amends section 97(4) to limit the grounds on which the Authority may direct a holder of a capital markets services licence to remove an officer without giving the holder an opportunity to be heard.

Clause 43 amends section 99(1)(h) to allow additional exemptions under subsection (1) to be granted by notice in writing, in accordance with section 337(2), rather than by regulations.

Clause 44 amends section 100(2) to enhance the penalties that may be prescribed for the contravention of any regulations made under the section.

Clause 45 amends section 101(2) to empower the Authority to issue written directions, instead of regulations, to specify requirements on the qualifications, experience and training of representatives.

Clause 46 inserts a new section 103A to define the term “money or other assets” for the purposes of Division 2 of Part V.

Clause 47 amends section 104 to clarify that the section also applies to money or other assets that are received by a holder of a capital markets services licence on account of its customers, and to delete the definition of “money or other assets” which is no longer necessary in the light of clause 46.

Clause 48 inserts a new section 104A to provide that customers’ money or other assets must not be used for the payment of the debts of the holder of a capital markets services licence.

Clause 49 amends section 120 —

- (a) to remove the requirement for licence holders to sign circulars and other written communication sent by them; and
- (b) to change the retention period of the circulars and other written communication from 7 years to 6 years.

Clause 50 amends section 123(4) to enhance the penalties that may be prescribed for the contravention of any regulations made under the section.

Clause 51 amends section 125 to modify the scope of transactions in which a holder of a capital markets services licence to deal in securities is required to disclose that it is acting in the transaction as principal.

Clause 52 amends section 131(2) to clarify that a relevant person must enter, in the register of his interests in securities, the particulars of any change in his interest in securities within 7 days after the date of the change.

Clause 53 makes a technical amendment to section 146(1).

Clause 54 amends section 153(3) to provide that nothing in Division 3 of Part IX, relating to the supervision and investigation powers of the Authority, compels the disclosure by an advocate and solicitor of a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity or authorise the taking of any such document or other material which is in his possession.

Clause 55 amends section 224 to extend the exceptions to sections 218(2) and 219(2) to include the sale of securities pursuant to any requirement imposed by the Government or any requirement imposed under any written law or order of court.

Clause 56 amends section 239 —

- (a) to clarify that the term “guarantor corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);
- (b) to make consequential amendments relating to the repeal of section 244, amendments to section 256 and removal of the requirements relating to the appointment of a trustee for debenture holders under Subdivision (3) of Division 1 of Part XIII;
- (c) to make a technical amendment to subsection (3);
- (d) to insert a new subsection (3A) to clarify that subsection (3) (invitation to the public to deposit or lend money considered a public offer of debentures) does not apply to invitations by prescribed corporations (as defined under subsection (4)) to deposit money with or lend money to these corporations, and that documents relating thereto are not debentures; and
- (e) to limit any declaration of any corporation or other entity as a prescribed corporation under subsection (4) to the purposes of that provision only.

Clause 57 inserts a new section 239A to empower the Authority to disapply Division 1 of Part XIII to an offer or invitation to the public where both that Division and Division 2 of Part XIII apply (but for this section) to that offer or invitation.

Clause 58 amends section 240 —

- (a) to make consequential amendments relating to the repeal of section 244;
- (b) to clarify that the references in subsections (1) and (4) to requirements as may be prescribed are references to requirements as may be prescribed by the Authority;



- (c) to clarify that a prospectus or profile statement referred to in subsection (10) is deemed to have been lodged for the purposes of subsection (8) when the amendment to the prospectus or profile statement was lodged;
- (d) to clarify in subsection (11) that where an amendment to a prospectus or profile statement has been lodged with the Authority in the manner referred to in that subsection, the prospectus or profile statement as amended is deemed for the purposes of subsection (8) to have been lodged when the original prospectus or profile statement was lodged with the Authority;
- (e) to insert a new subsection (11A) to clarify that an amendment to a prospectus or profile statement that has been lodged is treated as part of the original prospectus or profile statement;
- (f) to extend the scope of subsection (12) so as to empower the Authority to publish any translation in the English language of a prospectus or profile statement lodged with the Authority pursuant to the new section 318A(1);
- (g) to make technical amendments to subsections (13)(c) and (14)(c); and
- (h) to limit the circumstances in which the Authority may refuse to register a prospectus or profile statement without giving the person lodging it with the Authority an opportunity to be heard.

Clause 59 amends section 241 —

- (a) to make consequential amendments relating to the repeal of section 244; and
- (b) to improve the readability of subsections (5) and (6).

Clause 60 amends section 242 —

- (a) to empower the Authority to issue a stop order on public interest ground against the allotment, issue or sale of securities after the registration of the prospectus or profile statement;
- (b) to provide for exceptions to the opportunity to be heard where the Authority issues a stop order; and
- (c) to clarify that the reference to the revocation of an interim stop order under subsection (9) is a reference to revocation by the Authority.

Clause 61 repeals section 244 to give effect to Recommendation 2.12 in the report of the recommendations of the Company Legislation and Regulatory Framework Committee (the Committee) presented to the Government in October 2002 (the CLRFC Report).

Clause 62 makes a technical amendment to section 245(2).

Clause 63 amends section 247 —

- (a) to extend the scope of subsection (1) to empower the Authority to exempt any prospectus or profile statement from any requirement of the Act relating

to the form or content of a prospectus or profile statement, subject to conditions and restrictions determined by the Authority;

- (b) to provide in subsection (2) that the Authority will not grant an exemption under subsection (1) unless it is of the opinion that the cost of complying with the requirement outweighs the resulting protection to investors or that it would not be prejudicial to the public interest if the relevant requirement were dispensed with;
- (c) to extend the scope of subsection (3) to empower the Authority to exempt any class of persons and any class or description of prospectuses or profile statements from any requirement relating to the form or content of a prospectus or profile statement, subject to conditions or restrictions determined by the Authority; and
- (d) to delete subsection (6) which is unnecessary.

Clause 64 amends section 249 —

- (a) to empower the Authority to exempt any person or class of persons, or any prospectus or class or description of prospectuses from the requirement for the expert's written consent under the section, subject to conditions or restrictions determined by the Authority; and
- (b) to provide that it is an offence for any person to contravene any such condition or restriction.

Clause 65 amends section 252(1) —

- (a) to extend the time during which a person referred to in section 254(3)(b) to (f) is required to notify the person making the offer or invitation after the first-mentioned person becomes aware of any matter in subsection (1)(a), (b) or (c);
- (b) to align paragraph (b) of the section with section 253(1)(b) for consistency; and
- (c) to make consequential amendments relating to the repeal of section 244.

Clause 66 amends section 253(1) —

- (a) to align paragraph (a) of the section with section 254(1)(a) for consistency; and
- (b) to make consequential amendments relating to the repeal of section 244.

Clause 67 amends section 254(1) to align paragraphs (b) and (c) with section 253(1)(b) and (c) for consistency.

Clause 68 amends section 256 (which deals with a public offer by means of renounceable rights issue) —

- (a) to replace the requirement to lodge an abridged prospectus with the Authority with a requirement to lodge an offer information statement;

- (b) to clarify that section 240 does not apply to such offer if an offer information statement is lodged in accordance with the section;
- (c) to empower the Authority to modify the prescribed form and content of an offer information statement; and
- (d) to apply sections 249, 250, 253, 254 and 255 to an offer information statement.

Clause 69 makes technical amendments to section 257.

Clause 70 amends section 259 —

- (a) to provide that the Authority must give notice in the *Gazette* of an exemption granted under the section;
- (b) to extend the scope of the section to a prospectus offering debentures or units of debentures of a corporation;
- (c) to clarify that the reference to moneys received in subsection (7) is to moneys received from applicants in pursuance of the prospectus; and
- (d) to provide that subsection (11) (prospectus may not be issued if it contains certain statements) also applies to certain statements as to permission having been given or applied for for the securities concerned to be listed for quotation on the official list of, dealt in or quoted on, a securities exchange.

Clause 71 amends section 261 to provide that sections 268, 269 and 270 do not apply to prescribed corporations as defined under the new subsection (1B).

Clause 72 repeals sections 262, 263 and 264 to give effect to Recommendation 2.13 of the CLRFC Report.

Clause 73 amends section 266 to delete subsection (1) in order to give effect to Recommendation 2.13 of the CLRFC Report.

Clause 74 inserts a new section 267A to confer on the holder of debentures, the Authority and (where applicable) a securities exchange a right to apply to the court to compel a trustee for holders of such debentures to perform his duties under the trust deed.

Clause 75 amends section 270(1) to clarify that the borrowing corporation is required to make reports to the trustee for holders of debentures only where a trustee has been appointed.

Clause 76 repeals and re-enacts section 273 to extend the scope of the exemption under the section to include —

- (a) offers of securities made in connection with a take-over offer or a proposed compromise or arrangement where the target corporation is not incorporated in Singapore and is one whose securities are not listed for quotation on a securities exchange; provided that the offer complies with the requirements of the jurisdiction in which the corporation is incorporated;

- (b) offers of units of securities (including covered warrants) where the units will be listed for quotation on a securities exchange and the underlying securities are already listed on a securities exchange or a recognised securities exchange; and
- (c) offers of securities by a corporation pursuant to a share investment offer or scheme (including a share option offer or scheme) to a bona fide employee, former employee, director, former director, consultant or adviser of the corporation or its related corporation, or a spouse, widow, widower or child below the age of 18 of such employee, former employee, director or former director;

The clause also repeals and re-enacts section 274 to rationalise the list of institutions and persons to which the exemption under the section applies.

Clause 77 amends section 275(2) —

- (a) to extend the definition of “information memorandum” to include a document purporting to describe the business and affairs of the corporation whose securities are the subject of the offer or invitation or purporting to describe the business and affairs of both that corporation and the person making the offer or invitation;
- (b) to amend the definition of “sophisticated investor” to provide for the manner in which the total net assets of a corporation not required to prepare audited accounts is to be determined for the purpose of determining whether such assets exceed \$10 million; and
- (c) to replace the words “a natural person” in paragraph (c) of the definition of “sophisticated investor” with the words “an individual” for consistency throughout the Act.

Clause 78 amends section 276 to provide that the first sale of securities initially acquired under an exemption in section 274 or 275 is not deemed to be an offer of the securities to the public under section 276(2) if at least 6 months have elapsed since the date that the securities were initially acquired, whether or not the securities are listed for quotation or quoted on a securities exchange or a recognised securities exchange. A technical amendment is made to section 276(4), and section 276(5) is inserted for clarification.

Clause 79 repeals and re-enacts section 277 —

- (a) to replace references to statement of material facts with offer information statement;
- (b) to empower the Authority to modify the prescribed form and content of an offer information statement; and
- (c) to apply sections 249, 253, 254 and 255 to an offer information statement.

Clause 80 repeals section 280 to give effect to Recommendations 2.8 and 2.9 of the CLRFC Report.

Clause 81 makes a consequential amendment to section 281(1).

Clause 82 amends section 283(1) to define “responsible person” in the case of a collective investment scheme for which an application for authorisation under section 286 or recognition under section 287 has been made.

Clause 83 inserts a new section 284A to empower the Authority to disapply Division 2 of Part XIII to an offer or invitation to the public where both that Division and Division 1 of Part XIII apply (but for this section) to that offer or invitation.

Clause 84 amends section 286 —

- (a) to rationalise the list of persons referred to in subsection (3)(b); and
- (b) to limit the circumstances in which the Authority may refuse to authorise a collective investment scheme without giving the applicant an opportunity to be heard.

Clause 85 amends section 287 —

- (a) to rationalise the list of persons referred to in subsection (3)(b);
- (b) to limit the circumstances in which the Authority may refuse to recognise a collective investment scheme without giving the applicant an opportunity to be heard; and
- (c) to insert new subsections (13A), (13B) and (13C) to require certain information and documents about a recognised scheme that is required under subsection (13)(a)(ii), (iii) and (v) and (b) to be published, sent or made available for inspection, to be so published, sent or made available in the language of the prospectus accompanying or making the offer of units in the scheme.

Clause 86 amends section 288 —

- (a) to empower the Authority to revoke or suspend the authorisation or recognition of a collective investment scheme on public interest ground;
- (b) to provide for an opportunity to be heard where the Authority revokes, suspends or refuses the withdrawal of authorisation or recognition of a collective investment scheme and the exceptions thereto; and
- (c) to provide a right of appeal by a person aggrieved by the revocation, suspension or refusal of withdrawal of authorisation or recognition of a collective investment scheme.

Clause 87 amends section 296 —

- (a) to clarify that the prospectus or profile statement referred to in subsection (7) is deemed for the purposes of subsection (6) to have been lodged when the amendment to the prospectus or profile statement was lodged;
- (b) to clarify in subsection (8) that where an amendment to a prospectus or profile statement has been lodged with the Authority in the manner referred

to in that subsection, the prospectus or profile statement as amended is deemed for the purposes of subsection (6) to have been lodged when the original prospectus or profile statement was lodged with the Authority;

- (c) to insert a new subsection (8A) to clarify that an amendment to a prospectus or profile statement that has been lodged is treated as part of the original prospectus or profile statement;
- (d) to extend the scope of subsection (9) so as to empower the Authority to publish any translation in the English language of a prospectus or profile statement lodged with the Authority pursuant to the new section 318A(1);
- (e) to make a technical amendment to subsection (10)(d)(i); and
- (f) to limit the circumstances in which the Authority may refuse to register a prospectus or profile statement without giving the person lodging it with the Authority an opportunity to be heard.

Clause 88 amends section 297 —

- (a) to empower the Authority to issue a stop order on public interest ground against the issue or sale of units in a collective investment scheme after the registration of the prospectus or profile statement; and
- (b) to provide for exceptions to the opportunity to be heard where the Authority issues a stop order.

Clause 89 amends section 300(1) to clarify that an advertisement or publication is not prohibited by subsection (1) if it is either authorised by the section or complies with the prescribed requirements.

Clause 90 amends section 301 —

- (a) to clarify that the reference to moneys received in subsection (7) is to moneys received from applicants as payment for the units, including contributions to the scheme and charges paid to the responsible person or its distribution agent; and
- (b) to provide that subsection (11) (prospectus may not be issued if it contains certain statements) also applies to certain statements as to permission having been given or applied for for the units of the collective investment scheme concerned to be listed for quotation on the official list of, dealt in or quoted on, a securities exchange.

Clause 91 repeals and re-enacts section 304 —

- (a) to remove the requirement that the units in a collective investment scheme offered pursuant to the section must be issued subject to the condition that they are not transferable except by operation of law; and
- (b) to rationalise the list of institutions and persons to which the exemption under the section applies.

Consequential to the removal of the non-transferability requirement in section 304, the clause also inserts a new section 304A —

- (a) to provide that where units in a collective investment scheme initially acquired pursuant to section 304 are first sold to any person other than one specified in section 304, the offer of those units to that person will be regarded as an offer to the public; and
- (b) to provide that where units in a collective investment scheme initially acquired pursuant to section 304 are first sold to any sophisticated investor, section 305 will apply to the offer of those units made to that sophisticated investor as if it were a public offer to a sophisticated investor.

Clause 92 amends section 305 —

- (a) to remove the requirement that the units in a collective investment scheme offered pursuant to the section must be issued subject to the condition that they are not transferable except by operation of law; and
- (b) to amend the definition of “sophisticated investor” in subsection (3) to provide for the manner in which the total net assets of a corporation not required to prepare audited accounts is to be determined for the purpose of determining whether such assets exceed \$10 million.

Consequential to the removal of the non-transferability requirement in section 305, clause 93 inserts a new section 305A to ensure that where units in a collective investment scheme initially acquired pursuant to section 305 are first sold to any person other than one specified in section 304 or 305, the offer of those units will be regarded as an offer to the public.

Clause 94 amends section 309 —

- (a) for consistency with section 337(2) by providing that the grant of exemptions on a case-by-case basis under subsection (3) need not be published in the *Gazette*; and
- (b) by modifying the definition of “securities” in subsection (7)(a).

Clause 95 amends section 310(2) to increase the minimum number of members in an Appeal Advisory Committee to 3 members, for consistency with the composition of Appeal Advisory Committees constituted under the Financial Advisers Act (Cap.110) and the Insurance Act (Cap.142).

Clause 96 amends section 311(2) to clarify that a member of the Appeal Advisory Panel is eligible for re-appointment.

Clause 97 repeals and re-enacts section 313 to empower the Minister to make regulations on matters relating to appeals under the Act, including the form and manner in which an appeal is to be made, the fees to be paid, and the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees.

Clause 98 amends section 315(1) to extend the obligation of secrecy to the entities mentioned in the section other than their officers and employees, and to exchange holding companies, their officers and employees.

Clause 99 inserts a new section 318A to require the translation of documents to be submitted to the Authority, made available for inspection, maintained or kept under the Act, into the English language.

Clause 100 amends section 320 to empower the Authority to appoint its officers to grant or revoke exemptions on a case-by-case basis under the provisions of the Act specified in the new Fourth Schedule (inserted by clause 110).

Clause 101 amends the definition of “officer” in section 331(5) for consistency with section 334 (amended by clause 103).

Clause 102 makes a consequential amendment to section 333(2).

Clause 103 amends section 334 —

- (a) to expand the definition of “misconduct” to include the contravention of any direction issued by the Authority under the Act and the commission of an offence under section 331 or 332(1); and
- (b) to introduce definitions for the terms “officer” and “partner” used in the section.

Clause 104 amends section 337 to empower the Authority to exempt a person, upon that person’s application, from requirements stipulated in any direction made by the Authority, and to make it an offence for a person to contravene any condition or restriction of an exemption imposed under the section.

Clause 105 amends section 339 to clarify that the extra-territorial effect of the section to specific Parts of the Act also applies for the purposes of civil penalty actions under section 232 and civil liability actions under section 234.

Clause 106 amends section 340(1) as a consequence to the amendment of section 320 (amended by clause 100) and the insertion of the new Fourth Schedule (inserted by clause 110).

Clause 107 amends section 341 —

- (a) to omit the matters which have been re-enacted in section 101(2) (by clause 45);
- (b) to clarify that the Authority may refund or remit, whether in whole or in part, fees paid in respect of any matter or thing required for the purposes of the Act;
- (c) to clarify that the Authority’s regulation-making power includes the power to provide that a contravention of any regulations made under the Act will be an offence; and
- (d) to enhance the penalties that may be prescribed for the contravention of any regulations made under the Act.



Clause 108 amends the definition of “securities financing” in the Second Schedule to include the provision of any credit facility, advance or loan to facilitate an acquisition of securities.

Consequential to the amendment of the definition of “responsible person” in section 283, clause 109 amends paragraph 8 of the Third Schedule to provide that the responsible person referred to in the paragraph is a responsible person of a collective investment scheme that is authorised under section 286 or recognised under section 287, as the case may be. The clause also amends paragraph 9 of the Third Schedule to modify the circumstances under which a foreign company may carry on, or hold itself out as carrying on, business in any regulated activity without being a holder of a capital markets services licence.

Clause 110 inserts a new Fourth Schedule which specifies the provisions of the Act containing exemptions that an officer appointed by the Authority under section 320(1A) (inserted by clause 100) may grant or revoke on a case-by-case basis.

Clause 111 is a provision enabling consequential amendments and transitional provisions to be made by subsidiary legislation.

## EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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