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Notification No. B 23 — The Securities and Futures (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 15th day of September 2008.

Securities and Futures (Amendment) Bill

Bill No. 23/2008.

Read the first time on 15th September 2008.

A BILL

i n t i t u l e d

An Act to amend the Securities and Futures Act (Chapter 289 of the 2006 Revised Edition) and to make related and consequential amendments to the Business Trusts Act (Chapter 31A of the 2005 Revised Edition) and the Companies Act (Chapter 50 of the 2006 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 2008 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2 of the Securities and Futures Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately after the definition of “advocate and solicitor” in subsection (1), the following definition:

10 ““appointed representative”, in respect of a type of regulated activity, has the meaning given to that expression in section 99D, and “appointed representative” means an appointed representative in respect of any type of regulated activity;”;

15 (b) by deleting the definition of “chief executive officer” in subsection (1) and substituting the following definition:

““chief executive officer” —

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

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

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(ii) principally responsible for the management and conduct of the business of the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding

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company or holder of a capital markets services licence, as the case may be, in Singapore; or

- 5 (b) in relation to a corporation (other than one referred to in paragraph (a)), means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;”;
- 10 (c) by deleting the word “only” in paragraph (b) of the definition of “closed-end fund” in subsection (1) and substituting the word “primarily”;
- 15 (d) by inserting, immediately after the words “Part III” in paragraph (b) of the definition of “customer” in subsection (1), the words “and the definition of “user” ”;
- 20 (e) by deleting the words “a designated clearing house” in paragraph (b) of the definition of “customer” in subsection (1) and substituting the words “an approved exchange or a designated clearing house, as the case may be,”;
- 25 (f) by inserting, immediately after the words “futures option transaction” in paragraphs (a)(i) (last line) and (b)(i) (last line) of the definition of “futures contract” in subsection (1), the words “, but does not include such contract or class of contracts as the Authority may prescribe”;
- (g) by deleting the definitions of “licence” and “licensed person” in subsection (1);
- 30 (h) by inserting, immediately after the definition of “providing custodial services for securities” in subsection (1), the following definition:
 - 35 “ “provisional representative”, in respect of a type of regulated activity, has the meaning given to that expression in section 99E, and “provisional representative” means a provisional representative in respect of any type of regulated activity;”;

- (i) by inserting, immediately after the definition of “public company” in subsection (1), the following definition:

““public register of representatives” means the register of that name under section 99C(3);”;

- 5 (j) by inserting, immediately after the definition of “real estate investment trust management” in subsection (1), the following definition:

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

- 10 (k) by deleting the definition of “representative’s licence” in subsection (1);

- (l) by deleting the word “or” at the end of paragraph (f) of the definition of “securities” in subsection (1);

- 15 (m) by deleting the comma at the end of paragraph (g) of the definition of “securities” in subsection (1) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(h) such other product or class of products as the Authority may prescribe;”;

- 20 (n) by deleting the word “or” at the end of paragraph (iii) of the definition of “securities” in subsection (1);

- (o) by inserting, at the end of paragraph (iv) of the definition of “securities” in subsection (1), the word “or”, and by inserting immediately thereafter the following paragraph:

- 25 “(v) such other product or class of products as the Authority may prescribe as not being securities;”;

- (p) by deleting the definitions of “substantial shareholder”, “substantial shareholding” and “substantial unitholder” in subsection (1) and substituting the following definition:

- 30 ““substantial unitholder” —

(a) in relation to a collective investment scheme, means a participant who has an interest or interests in one or more voting units in the scheme, the total votes attached to that unit, or those units, being not

less than 5% of the total votes attached to all the voting units in the scheme; or

(b) in relation to a business trust, means a person who has an interest or interests in one or more voting units in the business trust, the total votes attached to that unit, or those units, being not less than 5% of the total votes attached to all the voting units in the business trust;”;

(q) by deleting the word “or” at the end of paragraph (a)(i)(B) of the definition of “take-over offer” in subsection (1);

(r) by inserting, immediately after sub-paragraph (ii) of paragraph (a) of the definition of “take-over offer” in subsection (1), the following sub-paragraph:

“(iii) in the case of a collective investment scheme constituted as a unit trust and authorised under section 286, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and all or any of the units in which are listed for quotation on a securities exchange —

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

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

(s) by inserting, immediately after the definition of “take-over offer” in subsection (1), the following definition:

““temporary representative”, in respect of a type of regulated activity, has the meaning given to that expression in section 99F, and “temporary

representative” means a temporary representative in respect of any type of regulated activity;”;

- (t) by inserting, immediately after the definition of “transaction information” in subsection (1), the following definitions:

““treasury share” —

(a) in relation to a company, has the same meaning as in section 4(1) of the Companies Act (Cap. 50); and

(b) in relation to a corporation (other than a company), means any share equivalent to a treasury share in a company;

“trustee-manager” —

(a) in relation to a registered business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

(b) in relation to a business trust for which an application for registration has been made under section 4(1) of the Business Trusts Act, means the company proposed to be named as the trustee-manager in the application made under that section;

(c) in relation to a recognised business trust, means the entity which manages and operates the recognised business trust, by whatever name called and whether incorporated or not; and

(d) in relation to a business trust for which an application for recognition has been made under section 282TA(1), means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;”;

- (u) by deleting the definition of “unitholder” in subsection (1) and substituting the following definition:

““unitholder” —

(a) in relation to a collective investment scheme, means a participant of the scheme; and

(b) in relation to a business trust, means a person who holds a unit in the business trust;”;

(v) by deleting the full-stop at the end of the definition of “voting share” in subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following definition:

“ “voting unit” —

(a) in relation to a business trust, means an issued unit in the business trust, other than —

(i) a unit to which in no circumstances is there attached a right to vote; or

(ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:

(A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrears;

(B) upon a proposal to reduce the unitholders’ equity of the business trust;

(C) upon a proposal that affects rights attached to the unit;

(D) upon a proposal to wind up the business trust;

(E) upon a proposal for the disposal of the whole of the property, business and undertakings of the business trust;

(F) during the winding up of the business trust; and

(b) in relation to a collective investment scheme, means an issued unit in the scheme, other than —

(i) a unit to which in no circumstances is there attached a right to vote; or

(ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:

- 5 (A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrears;
- (B) upon a proposal to reduce the participants' funds of the scheme;
- 10 (C) upon a proposal that affects rights attached to the unit;
- (D) upon a proposal to wind up the scheme;
- (E) upon a proposal for the disposal of the whole of the property, business and undertakings of the scheme;
- 15 (F) during the winding up of the scheme.”; and

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

20 “(4) For the purposes of this Act, a person has a substantial shareholding in a corporation if —

- (a) he has an interest or interests in one or more voting shares (excluding treasury shares) in the corporation; and
- 25 (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in the corporation.

30 (5) For the purposes of this Act, a person has a substantial shareholding in a corporation, being a corporation the share capital of which is divided into 2 or more classes of shares, if —

- 35 (a) he has an interest or interests in one or more voting shares (excluding treasury shares) in one of those classes; and

(b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in that class.

5 (6) For the purposes of this Act, a person who has a substantial shareholding in a corporation is a substantial shareholder in that corporation.”.

New section 16A

3. The principal Act is amended by inserting, immediately after section 16, the following section:

10 **“Obligation to manage risks prudently**

16A.—(1) Without prejudice to the generality of section 16(1)(b), an approved exchange shall —

- 15 (a) ensure that the systems and controls concerning the assessment and management of risks to every market that it operates are adequate and appropriate for the scale and nature of its operations;
- 20 (b) obtain the Authority’s approval to the limits which it intends to establish on the number of open positions which may be held by any person under any futures contract traded on a futures market that it operates, and vary those limits only in a manner approved by the Authority; and
- 25 (c) obtain the Authority’s approval if it does not intend to establish limits on the number of open positions which may be held by any person under any futures contract traded on a futures market that it operates.

(2) Nothing in subsection (1) shall preclude an approved exchange from —

- 30 (a) establishing, in respect of open positions which may be held by any person under any futures contract traded on a futures market that it operates, different position limits for different futures contracts, or for different months or days in the period the positions may be held; or
- (b) establishing limits whether on long or short positions, and whether on a net or gross basis.

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

(4) Any person who wilfully exceeds any position limit established or varied by an approved exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.”.

Repeal and re-enactment of section 31

4. Section 31 of the principal Act is repealed and the following section substituted therefor:

“Power of Authority to appoint adviser

31.—(1) Where —

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

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

(c) the Authority is of the opinion that an approved exchange —
(i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 5;

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

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

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

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

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

(2) Where the Authority has exercised its power under subsection (1), it may at any time do one or more of the following:

- 5 (a) vary or revoke any appointment made by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) appoint another statutory adviser in accordance with subsection (1) in place of or in addition to the statutory adviser earlier appointed;
- 10 (c) add to, vary or revoke any term or condition specified by the Authority under this section.

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

- 15 (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

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

25 (5) The approved exchange shall reimburse the Authority any remuneration and expenses payable by the approved exchange to a statutory adviser and paid by the Authority to the statutory adviser.”.

New section 43A

5. The principal Act is amended by inserting, immediately after section 43, the following section:

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

43A.—(1) The Authority may exempt a recognised market operator or a class of recognised market operators from any of the provisions in this Part if it is satisfied that the non-compliance by such

recognised market operator or class of recognised market operators with such provision would not detract from the objectives specified in section 5.

5 (2) Such exemption shall be subject to such conditions or restrictions as may be imposed by the Authority.”.

Amendment of section 45

6. Section 45 of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

10 “(1A) The Authority may also make regulations for the purpose of carrying out section 16A, including —

- (a) requiring an approved exchange to reckon specified positions for the purpose of determining if limits established or varied under section 16A(1) have been exceeded;
- 15 (b) requiring an approved exchange to take specified steps to ensure compliance with those limits; and
- (c) specifying measures to manage any risks assumed by an approved exchange.”.

Amendment of section 48

20 7. Section 48(1) of the principal Act is amended by deleting the words “all unsettled or open market contracts” in the definition of “default rules” and substituting the words “any unsettled or open market contract”.

Repeal and re-enactment of section 61

8. Section 61 of the principal Act is repealed and the following section substituted therefor:

25 “Obligation to manage risks prudently

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

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

- 5 (b) obtain the Authority's approval to the limits which it intends to establish on the number of open positions which may be held by any person under any futures contract cleared or settled with the designated clearing house, and vary those limits only in a manner approved by the Authority; and
- (c) obtain the Authority's approval if it does not intend to establish limits on the number of open positions which may be held by any person under any futures contract cleared or settled with the designated clearing house.
- 10 (2) Nothing in subsection (1) shall preclude a designated clearing house from —

 - (a) establishing, in respect of open positions which may be held by any person under any futures contract cleared or settled with the designated clearing house, different position limits for different futures contracts, or for different months or days in the period the positions may be held; or
 - (b) establishing limits whether on long or short positions, and whether on a net or gross basis.
- 20 (3) Any person who wilfully exceeds any position limit established or varied by a designated clearing house shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.”.

Amendment of section 62

9. Section 62 of the principal Act is amended —

- 25 (a) by deleting the words “in respect of or” wherever they appear in subsection (1) and substituting in each case the words “for or”; and
- (b) by deleting subsections (2) and (3) and substituting the following subsections:

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

 - 35 (a) subject to sections 63 and 64, ensure that such money is deposited in a trust account, or such assets are deposited in a custody account, to be held for the

benefit of the customers of the member and disposed of or used only for or in relation to contracts of customers of the member;

5 (b) ensure that such money or assets are kept separate from all money and assets received by the designated clearing house from members which have been notified by members under subsection (1) as not being deposited or paid for or in relation to contracts of customers of those members; and

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

15 (3) Nothing in subsection (2)(a) shall prevent a designated clearing house from commingling all money or assets deposited pursuant to that provision in the same trust account or custody account, as the case may be.

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

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

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

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

30 (ii) in the case of assets —

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

35 (B) if the asset cannot be returned to the custody account, deposit an amount of money which is equivalent to the monetary value of the asset at

the time of the contravention of subsection (2)(a) or (b) in the trust account referred to in subsection (2)(a) for the benefit of the customers of the member.”.

5 **Repeal and re-enactment of section 63**

10. Section 63 of the principal Act is repealed and the following section substituted therefor:

“Permissible use of customers’ money and assets by designated clearing house

10 **63.**—(1) Where a member of a designated clearing house fails to meet its obligations to the designated clearing house that arise from contracts of customers of the member (referred to in this section as the subject obligations), the designated clearing house may use any money or assets deposited or paid for or in relation to contracts of
15 customers of the member and held by the designated clearing house (including any money deposited in the trust account and any assets deposited in the custody account referred to in section 62(2)(a)) (collectively referred to in this section as customers’ money or assets) to meet the subject obligations, if —

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

25 (b) either —

(i) both of the following have been wholly utilised to meet the subject obligations:

(A) any money or assets deposited or paid for or in relation to contracts of the member itself and held by the designated clearing house;

30 (B) any money or assets deposited by the member with the designated clearing house as collateral or guarantee for the purpose of satisfying all obligations of the member to the designated

clearing house (excluding any customers' money or assets); or

- (ii) the designated clearing house has reasonable grounds for forming an opinion that the failure to use the customers' money or assets to meet the subject obligations may jeopardise the financial integrity of the designated clearing house;
- (c) the designated clearing house has made provision in its business rules for the use of customers' money or assets in the circumstances specified in paragraphs (a) and (b);
- (d) where the designated clearing house has made provision in its business rules for requirements additional to those in paragraphs (a) and (b), the additional requirements are not inconsistent with the requirements in those paragraphs; and
- (e) the money or assets are used in accordance with the provisions of the business rules referred to in paragraphs (c) and (d).

(2) A designated clearing house shall notify the Authority before using any such customers' money or assets in the circumstances specified in subsection (1)."

Amendment of section 64

11. Section 64(1) of the principal Act is amended —

- (a) by deleting the words "in respect of" and substituting the word "for"; and
- (b) by deleting the words "section 62(2)(b)" and substituting the words "section 62(2)(a)".

Amendment of section 70

12. Section 70 of the principal Act is amended by deleting the words "62(2) or (3)," and substituting the words "62(2) or (4),".

New section 80A

13. The principal Act is amended by inserting, immediately after section 80, the following section:

“Power of Authority to appoint adviser

80A.—(1) Where —

- (a) a designated clearing house informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) a designated clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that a designated clearing house —
 - (i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 47;
 - (ii) is or is likely to become insolvent or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;
 - (iii) has contravened any of the provisions of this Act; or
 - (iv) has failed to comply with any condition attached to its designation as a designated clearing house; or
- (d) the Authority considers it in the public interest to do so,

the Authority may appoint one or more persons as statutory advisers, on such terms and conditions as the Authority may specify, to advise the designated clearing house on the proper management of such of the business of the designated clearing house as the Authority may determine.

(2) Where the Authority has exercised its power under subsection (1), it may at any time do one or more of the following:

- (a) vary or revoke any appointment made by the Authority in exercise of such power, on such terms and conditions as it may specify;
- (b) appoint another statutory adviser in accordance with subsection (1) in place of or in addition to the statutory adviser earlier appointed;
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

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

- 5 (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

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

15 (5) The designated clearing house shall reimburse the Authority any remuneration and expenses payable by the designated clearing house to a statutory adviser and paid by the Authority to the statutory adviser.”.

Amendment of section 81S

20 **14.** Section 81S of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

 “(1A) The Authority may also make regulations for the purpose of carrying out section 61, including —

- 25 (a) requiring a designated clearing house to reckon specified positions for the purposes of determining if limits established or varied under section 61(1) have been exceeded;
- (b) requiring a designated clearing house to take specified steps to ensure compliance with those limits; and
- 30 (c) specifying measures to manage any risks assumed by a designated clearing house.”.

Amendment of section 81U

15. Section 81U of the principal Act is amended by inserting, immediately after subsection (2), the following subsections:

“(3) The Authority may exempt a holding company of an approved exchange or a designated clearing house from subsection (1) if it is satisfied that the exemption would not detract from the objectives specified in section 81T.

5 (4) The exemption shall be subject to such conditions or restrictions
as may be imposed by the Authority.”.

Amendment of Part IV

16. Part IV of the principal Act is amended —

10 (a) by deleting the Part heading and substituting the following Part heading:

“HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES”; and

(b) by deleting the heading to Division 1 and substituting the following heading:

15 “*Capital Markets Services Licence*”.

Repeal of section 83

17. Section 83 of the principal Act is repealed.

Amendment of section 84

18. Section 84 of the principal Act is amended —

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

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

25 (b) by deleting the words “or renewal of a licence” in subsection (3) and substituting the words “of a capital markets services licence”;

(c) by deleting subsections (4), (5), (5A), (5B), (6), (7) and (8); and

- (d) by deleting the words “or renewal of licence” in the section heading and substituting the words “of capital markets services licence”.

Amendment of section 85

5 **19.** Section 85 of the principal Act is amended —

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

10 “(1) The holder of a capital markets services licence shall on a yearly basis on such date as the Authority may specify pay such licence fee for each regulated activity to which the licence relates as the Authority may prescribe.”;

- (b) by deleting paragraph (b) of subsection (2);

- (c) by deleting paragraphs (c) and (d) of subsection (2) and substituting the following paragraphs:

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

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

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

25 “(4) Where the holder of a capital markets services licence fails to pay the licence fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.”.

Amendment of section 86

30 **20.** Section 86 of the principal Act is amended —

- (a) by deleting the words “or renewal” in subsections (4) (2nd line), (5) and (6);

- (b) by deleting the word “or” at the end of subsection (4)(m);

- (c) by deleting the words “or renew” in subsection (4)(n);
- (d) by deleting the full-stop at the end of paragraph (n) of subsection (4) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

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

- (e) by deleting the full-stop at the end of paragraph (c) of subsection (6) and substituting a semi-colon, and by inserting immediately
- 10 thereafter the following paragraph:

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

Repeal of sections 87 and 87A

- 15 **21.** Sections 87 and 87A of the principal Act are repealed.

Amendment of section 88

22. Section 88 of the principal Act is amended —

- (a) by deleting the words “or renew a licence” in subsection (1) and substituting the words “a capital markets services licence”;
- 20 (b) by deleting the words “licensed person” in subsection (2) and substituting the words “holder of a capital markets services licence”; and
- (c) by deleting the word “his” in subsection (3) and substituting the word “its”.

Repeal of section 89

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23. Section 89 of the principal Act is repealed.

Amendment of section 90

24. Section 90 of the principal Act is amended —

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

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

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

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

- (c) by deleting subsection (2A);

- (d) by deleting the words “, 87(3) or 87A(10)” in subsection (3)(b); and

- (e) by deleting the word “licence” in the section heading and substituting the words “capital markets services licence”.

Amendment of section 91

25. Section 91(1) of the principal Act is amended by deleting the word “, renewing”.

Amendment of section 92

26. Section 92 of the principal Act is amended —

- (a) by deleting the words “, renewal or variation of a licence” and substituting the words “or variation of a capital markets services licence”; and

- (b) by deleting the words “, renewal or variation of licence” in the section heading and substituting the words “or variation of capital markets services licence”.

Amendment of section 93

27. Section 93 of the principal Act is amended —

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

“(1) Where —

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

(b) a change occurs in any matter records of which are required by section 94 to be kept in relation to the holder,

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

(b) by deleting the words “licensed person ceases to carry on, or ceases to act as a representative in carrying on,” in subsection (2) and substituting the words “holder of a capital markets services
10 licence ceases to carry on”.

Repeal and re-enactment of sections 94 and 95

28. Sections 94 and 95 of the principal Act are repealed and the following sections substituted therefor:

“Records of holders of capital markets services licence

15 **94.**—(1) The Authority shall keep in such form as it thinks fit records of holders of a capital markets services licence setting out the following information of each holder:

(a) its name;

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

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

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

(e) such other information as may be prescribed.

30 (2) The Authority may publish the information referred to in subsection (1) or any part of it in such manner as it considers appropriate.

Lapsing, revocation and suspension of capital markets services licence

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

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

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

- (a) there exists a ground on which the Authority may refuse an application under section 86;
- (b) the holder of the capital markets services licence fails or ceases to carry on business in all the regulated activities for which it was licensed;
- (c) the Authority has reason to believe that the holder, or any of its officers or employees, has not performed its or his duties efficiently, honestly or fairly;
- (d) the holder has contravened any condition or restriction applicable in respect of its licence, any written direction issued to it by the Authority under this Act, or any provision in this Act;
- (e) the Authority has reason to believe that the holder is carrying on business in any regulated activity for which it was licensed in a manner that is contrary to the interests of the public;
- (f) the holder has furnished any information or document to the Authority that is false or misleading;
- (g) the holder fails to pay the licence fee referred to in section 85; or
- (h) a prohibition order under section 101A has been made by the Authority, and remains in force, against the holder.

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

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

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

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

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

- (a) the holder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- 10 (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any property of the holder;
- (c) the holder has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or
- 15 (d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the holder.

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

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

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

- (a) performs a regulated activity while its licence has lapsed or has been revoked or suspended; or
- (b) contravenes subsection (6),

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

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

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

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

15 **Amendment of section 96**

29. Section 96 of the principal Act is amended —

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

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

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

(b) change the nature of the appointment of a person as a director from one that is non-executive to one that is
25 executive,

unless it has obtained the approval of the Authority.”;

(b) by deleting the words “subsection (1)” in subsection (1A) and substituting the words “subsection (1)(a)”;

(c) by inserting, immediately after subsection (1A), the following
30 subsection:

“(1B) Subsection (1) shall not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign

company if, at the time of the appointment or change, the person —

(a) does not reside in Singapore; and

(b) is not directly responsible for its business in Singapore or any part thereof.”;

(d) by inserting, immediately after paragraph (a) of subsection (4), the following paragraph:

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

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

“(6) Without prejudice to the Authority’s power to impose conditions or restrictions under section 88, the Authority may, at any time by notice in writing to the holder of a capital markets services licence, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

(7) Any person who contravenes any condition imposed under subsection (6) shall be guilty of an offence.”.

Amendment of section 97

30. Section 97 of the principal Act is amended —

(a) by deleting the word “or” at the end of subsection (1)(f);

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

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

(c) by deleting the comma at the end of paragraph (g) of subsection (1) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(h) is not a fit and proper person for such office;”; and

(d) by inserting, immediately after paragraph (a) of subsection (4), the following paragraph:

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

5

New sections 97A and 97B

31. The principal Act is amended by inserting, immediately after section 97, the following sections:

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

10 **97A.**—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

15 (2) No person shall enter into any arrangement in relation to shares in the holder of a capital markets services licence that is a company by virtue of which he would, if the arrangement is carried out, obtain effective control of the holder, unless he has obtained the prior approval of the Authority to his entering into the arrangement.

20 (3) An application for the Authority’s approval under subsection (2) shall be made in writing, and the Authority may approve the application if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to have effective control of the holder of the capital markets services licence;
- 25 (b) having regard to the applicant’s likely influence, the holder of a capital markets services licence is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and
- 30 (c) the applicant satisfies such other criteria as may be prescribed or as may be specified in written directions by the Authority.

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

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

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

and the applicant shall comply with such conditions.

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

(6) For the purposes of this section and section 97B —

(a) a reference to a person entering into an arrangement in relation to shares includes —

(i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;

(ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of his shares to the first person;

(iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and

(iv) becoming a trustee of a trust in respect of those shares;

(b) a person shall be regarded as obtaining effective control of the holder of a capital markets services licence by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —

(i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the holder; or

(ii) control, directly or indirectly, 20% or more of the voting power in the holder; and

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

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

Objection to control of holder of capital markets services licence

97B.—(1) The Authority may serve a written notice of objection on —

- (a) any person required to obtain the Authority's approval or who has obtained the approval under section 97A; or
- (b) any person who, whether before, on or after the date of commencement of this section, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the holder of a capital markets services licence or controls, directly or indirectly, 20% or more of the voting power in the holder,

if the Authority is satisfied that —

- (i) any condition of approval imposed on the person under section 97A(4) has not been complied with;
- (ii) the person is not or ceases to be a fit and proper person to have effective control of the holder of the capital markets services licence;
- (iii) having regard to the likely influence of the person, the holder of a capital markets services licence is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;
- (iv) the person does not or ceases to satisfy such criteria as may be prescribed;
- (v) the person has furnished false or misleading information or documents in connection with an application under section 97A; or

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

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

- (a) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;
- (d) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

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

- (a) take such steps as are necessary to ensure that he ceases to be a party to the arrangement described in section 97A(2) or ceases to have control of a holder of a capital markets services licence in the manner described in subsection (1)(b); or
- (b) comply with such other requirements as the Authority may specify in written directions.

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

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

Amendment of section 98

32. Section 98(1) of the principal Act is amended —

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

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

(b) by deleting the word “licence” in paragraph (b) and substituting the words “capital markets services licence”; and

(c) by deleting paragraph (c).

10 Deletion of Division heading in Part IV

33. The principal Act is amended by deleting the words “*Division 2 — Exemptions*” above section 99.

Amendment of section 99

34. Section 99(6) of the principal Act is amended by inserting,
15 immediately after paragraph (a), the following paragraph:

“(aa) if it fails to pay the annual fee referred to in section 99A;”.

Amendment of section 99A

35. Section 99A of the principal Act is amended —

20 (a) by deleting the words “representative of an exempt person” in subsections (1) and (2) (1st and 2nd lines) and substituting in each case the words “representative of a person exempted under section 99(1)(f), (g) or (h)”;

(b) by inserting, immediately after the word “manner” in subsection (1), the words “and on such date”;

25 (c) by deleting the word “or” at the end of subsection (2)(a)(i);

(d) by deleting the comma at the end of sub-paragraph (ii) of subsection (2)(a) and substituting the word “; or”, and by inserting immediately thereafter the following sub-paragraph:

30 “(iii) a prohibition order has been made against it under section 101A,”;

- (e) by deleting the words “the exempt person” in subsection (2)(b) and substituting the words “a person exempted under section 99(1)(f), (g) or (h)”;
- (f) by deleting sub-paragraph (i) of subsection (2)(b) and substituting the following sub-paragraphs:
 - “(i) the exemption of the exempt person is withdrawn;
 - (ia) a prohibition order has been made against him under section 101A; or”;
- (g) by inserting, immediately after subsection (3), the following subsection:
 - “(4) Where an exempt person or a representative of a person exempted under section 99(1)(f), (g) or (h) fails to pay the fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.”; and
- (h) by deleting the words “its representative” in the section heading and substituting the words “certain representatives”.

New Division 2 of Part IV

- 36.** The principal Act is amended by inserting, immediately after section 99A, the following Division and sections:

“Division 2 — Representatives

Acting as representative

- 99B.**—(1) No person shall act as a representative in respect of any type of regulated activity or hold himself out as doing so, unless he is —
 - (a) an appointed representative in respect of that type of regulated activity;
 - (b) a provisional representative in respect of that type of regulated activity;
 - (c) a temporary representative in respect of that type of regulated activity; or

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

- 5 (i) the type and scope of the regulated activity carried out by the first-mentioned person are within the type and scope of, or are the same as, that carried out by the exempt person (in his capacity as an exempt person); and
- 10 (ii) the manner in which the first-mentioned person carries out that type of regulated activity is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out that type of regulated activity.

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

(3) A principal shall not permit any individual to carry on business in any type of regulated activity on its behalf unless —

- 20 (a) the individual is an appointed representative, provisional representative or temporary representative in respect of that type of regulated activity; or
- (b) the principal is an exempt person under section 99(1)(f), (g) or (h) and —
 - 25 (i) the type and scope of the regulated activity carried out by the individual are within the type and scope of, or are the same as, that carried out by the exempt person (in his capacity as an exempt person); and
 - 30 (ii) the manner in which the individual carries out that type of regulated activity is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out that type of regulated activity.

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

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

Records and public register of representatives

99C.—(1) The Authority shall keep in such form as it thinks fit records of the following information of each appointed representative, provisional representative and temporary representative:

- (a) his name;
- (b) the name of his current principal and every past principal (if any);
- (c) the current and past types of regulated activities performed by him and the date of commencement and cessation (if any) of his performance of such activities;
- (d) where the business of the principal for which he acts is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on;
- (e) disciplinary proceedings or other action taken by the Authority against him and published under section 322;
- (f) such other information as may be prescribed.

(2) The information referred to in subsection (1) need only be kept for such period of time as the Authority considers appropriate.

(3) The Authority may reproduce the records referred to in subsection (1) or any part of them in a public register of representatives which shall be published in such manner as it considers appropriate.

Appointed representative

99D.—(1) For the purposes of this Act, an appointed representative in respect of a type of regulated activity is an individual —

- (a) who satisfies such entry and examination requirements as may be specified by the Authority for that type of regulated

activity, the fact of which has been notified to the Authority either in the document lodged under section 99H(1), or (if applicable) under section 99E(5) within the time prescribed under that provision;

- 5 (b) whose name is entered in the public register of representatives as an appointed representative;
- (c) whose status as an appointed representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in
10 that type of regulated activity;
- (d) whose entry in the public register of representatives indicates that he is appointed to carry on business in that type of regulated activity and does not indicate that he has ceased to be so; and
- 15 (e) whose principal —
 - (i) is licensed to carry on business in that type of regulated activity; or
 - (ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement
20 to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d).

(2) For the purpose of subsection (1)(a), the Authority shall, by direction published in such manner as may be prescribed, specify the examination requirements for each type of regulated activity.

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

- 30 (4) An individual shall cease to be an appointed representative in respect of any type of regulated activity on the date —

- (a) he ceases to be the principal's representative or to carry out that type of regulated activity for that principal, the fact of which has been notified to the Authority under
35 subsection (8);

- (b) his principal ceases to carry on business in that type of regulated activity;
- (c) the licence of his principal is revoked or lapses or a prohibition order under section 101A is made against his principal prohibiting it from carrying out that type of regulated activity;
- (d) the individual dies; or
- (e) of the occurrence of such other circumstances as the Authority may prescribe.

(5) An individual shall not be treated as an appointed representative during the period in which the licence of his principal is suspended.

(6) Nothing in subsection (4) or (5) prevents the individual from being treated as an appointed representative in respect of that type of regulated activity if he becomes a representative of a new principal in respect of that type of regulated activity and subsection (1) is complied with.

(7) Subsections (4) and (5) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to that type of regulated activity entered into by that individual, whether the agreement, transaction or arrangement was entered into before, on or after the cessation or date of suspension; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(8) A principal shall, no later than the next business day after the day —

- (a) an individual ceases to be his representative; or
- (b) an individual who is his representative ceases to carry on business in any type of regulated activity which he is appointed to carry on business in,

furnish particulars of such cessation to the Authority, in the prescribed form and manner.

Provisional representative

99E.—(1) For the purposes of this Act, a provisional representative in respect of a type of regulated activity is an individual —

- 5 (a) who satisfies such entry requirements as may be specified by the Authority for that type of regulated activity;
- 10 (b) who intends to undergo an examination in order to satisfy the examination requirements specified by the Authority under section 99D(2) for that type of regulated activity, the fact of which has been notified to the Authority in the document lodged under section 99H(1);
- 15 (c) whose name is entered in the public register of representatives as a provisional representative;
- 20 (d) whose status as a provisional representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;
- 25 (e) whose entry in the public register of representatives indicates that he is appointed to carry on business in that type of regulated activity and does not indicate that he has ceased to be so;
- 30 (f) whose principal —
 - (i) is licensed to carry on business in that type of regulated activity; or
 - (ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d);
- (g) who has not previously been appointed as a provisional representative by the Authority; and
- (h) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a provisional representative.

(2) An individual shall only be a provisional representative in respect of any type of regulated activity for such period of time as the

Authority may specify against his name in the public register of representatives.

(3) A provisional representative in respect of any type of regulated activity shall immediately cease to be one —

- 5 (a) upon the expiry of the period of time specified by the Authority under subsection (2);
- (b) if he fails to comply with any condition or restriction imposed on him under section 99N;
- 10 (c) upon his principal informing the Authority of the satisfaction of the examination requirements specified for that or any other type of regulated activity under subsection (5); or
- (d) on the occurrence of such other circumstances as the Authority may prescribe.

15 (4) Section 99D(3) to (8) (other than subsection (4)(e) thereof) shall apply to a provisional representative —

- (a) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and
- 20 (b) with such other modifications and adaptations as the differences between provisional representatives and appointed representatives require.

25 (5) Where a provisional representative in respect of a type of regulated activity has satisfied the examination requirements specified for that type of regulated activity, his principal shall inform the Authority of that fact in the prescribed form and manner and within the prescribed time.

Temporary representative

99F.—(1) For the purposes of this Act, a temporary representative in respect of a type of regulated activity is an individual —

- 30 (a) who satisfies such entry requirements as may be specified by the Authority for that type of regulated activity;
- (b) whose name is entered in the public register of representatives as a temporary representative;

- (c) whose status as a temporary representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;
 - 5 (d) whose entry in the public register of representatives indicates that he is appointed to carry on business in that type of regulated activity and does not indicate that he has ceased to be so;
 - (e) whose principal —
 - 10 (i) is licensed to carry on business in that type of regulated activity; or
 - (ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d); and
 - 15 (f) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a temporary representative.
- (2) An individual shall only be a temporary representative in respect of any type of regulated activity for such period of time as the Authority may specify against his name in the public register of representatives.
- (3) A temporary representative in respect of any type of regulated activity shall immediately cease to be one —
- 25 (a) upon the expiry of the period of time specified by the Authority under subsection (2);
 - (b) if he fails to comply with any condition or restriction imposed on him under section 99N; or
 - (c) on the occurrence of such other circumstances as the Authority may prescribe.
- 30 (4) Section 99D(3) to (8) (other than subsection (4)(e) thereof) shall apply to a temporary representative —
- (a) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and

- (b) with such other modifications and adaptations as the differences between temporary representatives and appointed representatives require.

Offences

5 **99G.**—(1) Any person who contravenes section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

10 (2) Any person who contravenes section 99D(8), 99E(4) (in relation to the application of section 99D(8) to a provisional representative), 99F(4) (in relation to the application of section 99D(8) to a temporary representative) or 99H(5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Lodgment of documents

20 **99H.**—(1) A principal who desires to appoint an individual as an appointed, provisional or temporary representative in respect of any type of regulated activity shall lodge the following documents with the Authority in such form and manner as the Authority may prescribe:

- 25 (a) a notice of intent by the principal to appoint the individual as an appointed, provisional or temporary representative in respect of that type of regulated activity;
- 30 (b) a certificate by the principal that the individual is a fit and proper person to be an appointed, provisional or temporary representative in respect of that type of regulated activity; and
- 35 (c) in the case of a provisional or temporary representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

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

(3) The Authority may refuse to enter in the public register of representatives the particulars referred to in subsection (2) of the representative if the fee referred to in section 99K(1) or (4) (if
 10 applicable) is not paid.

(4) A principal who submits a certificate under subsection (1)(b) shall keep, in such form and manner and for such period as the Authority may prescribe, copies of all information and documents which the principal relied on in giving the certificate.

(5) Where a change occurs in any particulars of the appointed, provisional or temporary representative in any document required to be furnished to the Authority under subsection (1), the principal shall, no later than 14 days after the occurrence of such change, furnish
 15 particulars of such change to the Authority, in the prescribed form and manner.
 20

Exemption

99I.—(1) The Authority may exempt any person or class of persons from any of the requirements of sections 99D to 99H.

(2) Such exemption is subject to such conditions or restrictions as
 25 may be imposed by the Authority.

Representative to act for only one principal

99J.—(1) Unless otherwise approved by the Authority in writing, no appointed representative, temporary representative or provisional representative shall at any one time be a representative of more than
 30 one principal.

(2) Notwithstanding subsection (1), an appointed representative may be a representative of more than one principal if the principals are related corporations.

(3) The Authority may require an applicant for approval under subsection (1) to furnish it with such information or documents as the Authority considers necessary in relation to the application.

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

Lodgment and fees

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

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

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

(4) A representative shall pay such fee as may be prescribed by the Authority for any resubmission of a form or change in the particulars of a form lodged with the Authority in relation to his appointment as an appointed, provisional or temporary representative.

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

(6) Where the representative fails to pay the fee referred to in subsection (1), (2) or (3) by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.

(7) The fees referred to in this section shall be paid in the manner specified by the Authority.

Additional regulated activity

99L.—(1) The principal of an appointed representative may at any time lodge a notice with the Authority of its intention to appoint the representative as an appointed representative in respect of a type of regulated activity in addition to that indicated against the representative's name in the public register of representatives.

(2) The notification shall be lodged in such form and manner as may be prescribed and shall be accompanied by a certificate by the principal that the representative is a fit and proper person to be a representative in respect of the additional type of regulated activity.

(3) Subject to section 99M, the Authority shall, upon receipt of the notification, enter in the public register of representatives the additional type of regulated activity as one which the representative may carry on business in as a representative.

(4) The Authority may, before entering in the public register of representatives the matter set out in subsection (3), require the principal or representative to furnish it with such information or documents as the Authority considers necessary.

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

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

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

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

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

(b) he or his principal has not provided the Authority with such information or documents as the Authority may require;

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

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

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

(f) he —

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

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

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

25 (i) the Authority is not satisfied as to his educational or other qualification or experience having regard to the nature of the duties he is to perform in relation to that type of regulated activity;

30 (ii) he or his principal fails to satisfy the Authority that he is a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in that type of regulated activity;

35 (iii) the Authority is not satisfied as to his record of past performance or expertise having regard to the nature of the duties which he is to perform in relation to that type of regulated activity;

- (iv) the Authority has reason to believe that he will not carry on business in that type of regulated activity efficiently, honestly or fairly;
- 5 (h) in the case of the revocation of the status of an individual as an appointed, provisional or temporary representative —
 - (i) he or his principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition of licence, under section 99N or by regulations (as the case may be), that he remains a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in the type of regulated activity for which he is appointed;
 - 10 (ii) the Authority is not satisfied with —
 - 15 (A) his educational or other qualification or experience (being qualification or experience not known to the Authority at the time his name and particulars are entered in the public register of representatives); or
 - (B) his record of past performance or expertise,
 - 20 having regard to the nature of his duties as an appointed, provisional or temporary representative; or
 - (iii) the Authority has reason to believe that he will not carry on business in the type of regulated activity for which he is appointed efficiently, honestly or fairly;
 - 25 (i) the Authority has reason to believe that he may not be able to act in the best interests of the subscribers or customers of his principal, having regard to his reputation, character, financial integrity and reliability;
 - (j) the Authority is not satisfied as to his financial standing;
 - 30 (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the individual or any person employed by or associated with him for the purpose of his business;

- (l) the individual is in arrears of the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);
- 5 (m) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives or allow him to continue carrying on business as an appointed, provisional or temporary representative or to carry on business in that additional type of regulated activity, as the case may be;
- 10 (n) the Authority has reason to believe that any information or document that is furnished by him or his principal to the Authority is false or misleading;
- 15 (o) he has contravened any provision of this Act applicable to him, any condition or restriction imposed on him under this Act or any direction issued to him by the Authority under this Act;
- (p) a prohibition order under section 101A has been made by the Authority, and remains in force, against him;
- 20 (q) the licence of his principal is revoked;
- (r) the individual fails to pay any fee referred to in section 99K;
- (s) in the case of the proposed appointment of a temporary representative in respect of a type of regulated activity —
 - 25 (i) he is not licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity in a foreign jurisdiction;
 - (ii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act; or
 - 30 (iii) the period of his proposed appointment, together with the period of any past appointment (or part thereof) that falls within a prescribed period before the date of expiry of his proposed appointment, exceeds the permitted period prescribed by the Authority; or
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(*t*) in the case of the proposed appointment of a provisional representative in respect of a type of regulated activity —

5 (i) he is not or was not previously licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity in a foreign jurisdiction for such minimum period as may be prescribed for this sub-paragraph;

10 (ii) he was previously so licensed, authorised or regulated in a foreign jurisdiction but the period between the date of his ceasing to be so licensed, authorised or regulated and the date of his proposed appointment as a provisional representative exceeds such period as may be prescribed for this sub-paragraph; or

15 (iii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is or was so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act.

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

20 (*a*) instead of revoking the status of an individual as an appointed, provisional or temporary representative, suspend that status for such period as the Authority may determine; and

(*b*) at any time —

25 (i) extend the period of suspension; or

(ii) revoke the suspension.

30 (3) An individual whose status as an appointed, provisional or temporary representative has been revoked shall be deemed not to be an appointed, provisional or temporary representative, as the case may be.

(4) Where the status of an individual as an appointed, provisional or temporary representative has been suspended, he shall be deemed not to be an appointed, provisional or temporary representative (as the case may be) during the period of suspension.

(5) Where the Authority has revoked the status of an individual as an appointed, provisional or temporary representative, the Authority shall —

5 (a) indicate against his name in the public register of representatives that fact, which indication shall remain in the register for such period as the Authority considers appropriate; or

 (b) remove his name from the register.

10 (6) Where the Authority has suspended the status of an individual as an appointed, provisional or temporary representative, the Authority shall indicate against his name in the public register of representatives that fact and the period of the suspension.

15 (7) Where the Authority has extended or revoked a suspension of the status of an individual as an appointed, provisional or temporary representative, it shall indicate against his name in the public register of representatives the new expiry date of the suspension, or indicate that he is no longer suspended, as the case may be.

 (8) The Authority shall not take any action under subsection (1) or (2)(a) on the ground referred to in subsection (1)(n), if —

20 (a) in a case where the information or document was furnished by the individual to the Authority, the individual proves that he had —

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

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

 (b) in a case where the information or document was furnished by the principal to the Authority and —

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

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

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

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

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

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

(9) Subject to subsection (10), the Authority shall not take any action under subsection (1) or (2)(a) or (b)(i) without giving the individual an opportunity to be heard.

15 (10) The Authority may take action under subsection (1) or (2)(a) or (b)(i) on any of the following grounds without giving the individual an opportunity to be heard:

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

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

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

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

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

30 (d) the ground referred to in subsection (1)(s)(i) or (iii) or (t)(i) or (ii).

(11) Any revocation or suspension by the Authority shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement relating to any regulated activity entered into by such

individual, whether the agreement, transaction or arrangement was entered into before, on or after the revocation or suspension, as the case may be; or

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

Power of Authority to impose conditions or restrictions

99N.—(1) The Authority may, by notice in writing to an appointed, provisional or temporary representative, impose such conditions or restrictions as it thinks fit on him.

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

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

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

False statements in relation to notification of appointed, provisional or temporary representative

99O.—(1) Any principal who, in connection with the lodgment of any document under section 99H —

- (a) makes a statement which is false or misleading in a material particular; or
- (b) omits to state any matter or thing without which the document is misleading in a material respect,

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

(2) Any individual who, in connection with the lodgment by his principal of any document under section 99H —

(a) makes a statement to his principal which is false or misleading in a material particular, being a statement subsequently lodged with the Authority; or

(b) omits to state any matter or thing to his principal as a result of which the document is misleading in a material respect,

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

(3) Any person who, when required to furnish any document or information to the Authority under section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) —

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

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

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

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

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

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

Appeals

99P. Any person who is aggrieved by —

(a) the refusal of the Authority under section 99M(1) to enter his name and other particulars in the public register of representatives, or to enter an additional type of regulated activity for him in that register; or

(b) the revocation or suspension of his status as an appointed, provisional or temporary representative under section 99M(1) or (2)(a),

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

Amendment of section 100

37. Section 100 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

10 “(1) Without prejudice to section 341, the Authority may make regulations relating to the grant of a capital markets services licence, the proposed appointment of an individual as an appointed, provisional or temporary representative, the entering of his name or an additional type of regulated activity in the public register of representatives, and the revocation or suspension of his status as an
15 appointed, provisional or temporary representative, and requirements applicable to the holder of a capital markets services licence, an exempt person, a representative or a class of such persons.”.

Amendment of section 101

20 **38.** Section 101(1) of the principal Act is amended by deleting the words “licensed person, exempt person, representative of an exempt person” and substituting the words “holder of a capital markets services licence, exempt person, representative”.

New sections 101A to 101D

25 **39.** The principal Act is amended by inserting, immediately after section 101, the following sections:

“Power of Authority to make prohibition orders

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

- 30 (a) the Authority suspends or revokes the capital markets services licence held by the person;
- (b) where the person is exempt from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d), the Authority has reason to believe that

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

- 5 (c) the Authority suspends or revokes the status of that person as an appointed, provisional or temporary representative;
 - (d) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened any provision of this Act;
 - 10 (e) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly;
 - 15 (f) the person has an order for the payment of a civil penalty made against him by a court under Part XII or has entered into an agreement with the Authority to pay a civil penalty under that Part;
 - 20 (g) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to any regulated activity carried out by that person; or
 - 25 (h) the person has been removed at the direction of the Authority from office or employment as an officer of the holder of a capital markets services licence under section 97(1)(h).
- (2) In subsection (1), “relevant person” means —
- (a) the holder of a capital markets services licence or a person who was previously such a holder;
 - 30 (b) a person that is exempt from the requirement to hold a capital markets services licence under section 99(1) or a person who was previously so exempt;
 - (c) a representative of a person exempt from the requirement to hold a capital markets services licence under section 99(1)(f), (g) or (h) or a person who was previously such a representative;
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- (d) an appointed, provisional or temporary representative or a person who was previously such a representative;
- (e) an officer of the holder of a capital markets services licence or a person that is exempt from the requirement to hold a capital markets services licence under section 99(1), or a person who was previously such an officer; or
- (f) a person who has been convicted of an offence under section 82(1) or 99B(1).

(3) A prohibition order made under subsection (1) may do one or both of the following:

- (a) prohibit the person, whether permanently or for a specified period, from —
 - (i) performing any regulated activity, or performing such regulated activity in specified circumstances or capacities; or
 - (ii) taking part, directly or indirectly, in the management of, acting as a director of, or becoming a substantial shareholder of —
 - (A) a holder of a capital markets services licence; or
 - (B) an exempt person;
- (b) include a provision allowing the person, subject to any condition specified in the order —
 - (i) to do specified acts; or
 - (ii) to do specified acts in specified circumstances,
 that the order would otherwise prohibit him from doing.

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

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

(6) Where the Authority makes a prohibition order against any person who is an appointed, provisional or temporary representative, it shall indicate against his name in the public register of

representatives that fact, and the indication shall remain in the register for the duration of the order.

Effect of prohibition orders

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

(2) Where a prohibition order is made against a person and notified to the holder of a capital markets services licence or an exempt person, the holder or exempt person shall not employ the first-mentioned person to carry out any regulated activity or use the first-mentioned person's service, to the extent that this is prohibited by the order.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(5) The holder of a capital markets services licence or an exempt person against whom a prohibition order has been issued prohibiting it from carrying on any regulated activity shall immediately inform all its representatives who perform the regulated activity, by notice in writing of such prohibition order, and the representatives who are so informed shall cease to perform such regulated activity during the period specified in the prohibition order.

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Variation or revocation of prohibition orders

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

because of a change in any of the circumstances based on which the Authority made the order.

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

- 5 (a) on its own initiative; or
- (b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such document and fee as may be prescribed.
- 10 (3) The Authority shall not vary a prohibition order made against a person under subsection (2)(a) without giving the person an opportunity to be heard.
- (4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against him under subsection (2)(a)
- 15 may, within 30 days of the decision, appeal in writing to the Minister.

Date and effect of prohibition orders

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

- 20 (2) A prohibition order shall not operate so as to —
- (a) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition
- 25 order; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.”.

Repeal of sections 117, 118, 120, 122 and 124 and Divisions 2 and 3 of Part VI

- 30 **40.** Sections 117, 118, 120, 122 and 124 and Divisions 2 and 3 of Part VI of the principal Act are repealed.

Amendment of section 123

41. Section 123(2) of the principal Act is amended —

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

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

10 (ba) require contract notes to be issued by or on behalf of the holder of a capital markets services licence, and specify the information to be provided in the contract notes;”;

15 (b) by inserting, immediately after paragraph (g), the following paragraph:

 “(ga) require the holder of a capital markets services licence, and a representative of such a holder to take specified steps to ensure that a customer or prospective customer of the holder is apprised of the financial risks in relation to trades carried out by means of any trading account, before opening such account for the customer or prospective customer or soliciting or entering into an agreement with him to manage or guide such account;”;

25 (c) by deleting paragraph (i) and substituting the following paragraphs:

 “(i) specify the circumstances in which, and the conditions and restrictions under which, the holder of a capital markets services licence, and a representative of such a holder, may enter into or effect a transaction, and provide for matters relating thereto including the right of the other party to the contract in question to rescind it where a regulation made under this paragraph is contravened;

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- 5 (ia) require the holder of a capital markets services licence to comply with prescribed requirements concerning the sale of, or the making of recommendations with respect to, securities which the holder has subscribed for or purchased, or may be required to subscribe for or purchase, under an underwriting or sub-underwriting agreement;”.

Repeal and re-enactment of Divisions 1, 2 and 3 and new Division 4 of Part VII

- 10 **42.** Divisions 1, 2 and 3 of Part VII of the principal Act are repealed and the following Divisions and sections substituted therefor:

“Division 1 — Disclosure of Interest in Corporation

Application and interpretation of this Division

- 15 **130.**—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) A reference to a corporation is a reference —

- (a) to a company any or all of the shares in which are listed for quotation on the official list of a securities exchange; or
- 20 (b) to a corporation (not being a company, or a collective investment scheme constituted as a corporation) any or all of the shares in which are listed for quotation on the official list of a securities exchange, such listing being a primary listing.

25 (3) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the corporation having attached to it the same rights as are attached to that stock.

(4) A reference to a member —

- 30 (a) in relation to a company, means a person who is a member of the company under section 19(6) of the Companies Act (Cap. 50); and

(b) in relation to a corporation (other than a company), means any person equivalent to a member of a company.

(5) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities under this Division; and in determining whether a person is deemed to have an interest in securities under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

(a) a subsidiary of the second-mentioned person;

(b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities; or

(c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities.

(6) For the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time —

(a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time;

(b) where the person is a body corporate or unincorporated association (other than a partnership), of which its officer would, if he had acted with reasonable diligence in the conduct of its affairs, have been aware at that time;

(c) where the person is a limited liability partnership, of which its partner or manager would, if he had acted with reasonable diligence in the conduct of its affairs, have been aware at that time; or

(d) where the person is a partnership, of which its partner would, if he had acted with reasonable diligence in the conduct of its affairs, have been aware at that time.

(7) In this section —

“officer” —

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive officer, 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 the committee, and includes a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

Persons obliged to comply with this Division and power of Authority to grant exemption or extension

131.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

(4) The Authority may by notice in writing impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons shall comply with such conditions or restrictions.

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

(6) The Authority may, on the application of a person required to give a notice under this Division, in its discretion, extend, or further extend, the time for giving the notice.

Authority may extend scope of Division in certain circumstances

5 **132.** The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

10 (a) to any person, class of persons, securities, interests in securities, or class of securities or interests in securities, other than the persons, securities or interests in securities to which this Division applies;

 (b) to require the disclosure of interests in any entity, arrangement or trust other than a corporation,

15 and the provisions of this Division shall apply accordingly.

Subdivision (1) — Disclosure by directors and chief executive officer of corporation

Duty of director or chief executive officer to notify corporation of his interests

20 **133.—**(1) Every director and chief executive officer of a corporation shall give notice in writing to the corporation of particulars of —

 (a) shares in —

 (i) the corporation; or

25 (ii) a related corporation of the corporation,

 which he holds, or in which he has an interest and the nature and extent of that interest;

 (b) debentures of —

 (i) the corporation; or

30 (ii) a related corporation of the corporation,

 which he holds, or in which he has an interest and the nature and extent of that interest;

(c) his rights or options, or rights or options of his and another person or other persons, in respect of the acquisition or disposal of shares in or debentures of —

(i) the corporation; or

5 (ii) a related corporation of the corporation;

(d) contracts to which he is a party, or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in —

(i) the corporation; or

10 (ii) a related corporation of the corporation;

(e) participatory interests made available by —

(i) the corporation; or

(ii) a related corporation of the corporation,

15 which he holds, or in which he has an interest and the nature and extent of that interest;

(f) such other securities as the Authority may prescribe, which are held, whether directly or indirectly, by him, or in which he has an interest and the nature and extent of that interest; and

20 (g) any change in respect of the particulars of any matter referred to in paragraphs (a) to (f).

25 (2) Paragraphs (a)(ii), (b)(ii), (c)(ii), (d)(ii), (e) and (g) (in respect of a change in the particulars of any matter referred to in paragraphs (a)(ii), (b)(ii), (c)(ii), (d)(ii) and (e)) of subsection (1) shall only apply to a director of a corporation which is a company.

(3) A notice under subsection (1) —

(a) shall be in such form and shall contain such information as the Authority may prescribe; and

(b) shall be given —

30 (i) in the case of a notice under subsection (1)(g), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the shares, debentures, rights, options, contracts, participatory interests or other securities referred to in subsection (1),

whichever last occurs.

(4) For the purposes of this section —

(a) a director or chief executive officer of a corporation shall be deemed to have an interest in securities referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the corporation), as the case may be, holds or has an interest in those securities; and

(b) any contract entered into by, any assignment or right of subscription made or exercised by, or any grant made to, a family member of a director or chief executive officer of a corporation (not being himself a director or chief executive officer of the corporation) shall be deemed to have been entered into by, made or exercised by or made to the director or chief executive officer.

(5) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme; and

(b) a reference to a person who holds or acquires participatory interests or other securities referred to in subsection (1), or an interest in shares, debentures, participatory interests or other securities referred to in that subsection, includes a reference to a person who under an option holds or acquires a right to acquire or dispose of the participatory interests or securities, or the interest in shares, debentures, participatory interests or securities.

(6) In this section, “family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter below the age of 21 years.

Penalties under this Subdivision

134.—(1) Any director or chief executive officer of a corporation who —

(a) intentionally or recklessly contravenes section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) or (f), or section 133(1)(g) in respect of a change in the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f);

(b) intentionally or recklessly contravenes section 133(3) in respect of a notice of the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f) or of a change in any of those particulars; or

(c) in purported compliance with section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) or (f), or section 133(1)(g) in respect of a change in the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f), furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both 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.

(2) Any director or chief executive officer of a corporation who —

(a) contravenes section 133(1) or (3); or

(b) in purported compliance with section 133, furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Subdivision (2) — Disclosure by substantial shareholders in corporation

Duty of substantial shareholder to notify corporation of his interests

135.—(1) A person who is or (if he has ceased to be one) had been a substantial shareholder in a corporation shall give notice in writing to the corporation of particulars of the voting shares in the corporation in which he has or had an interest or interests and the nature and extent of that interest or those interests.

(2) A notice under subsection (1) —

- (a) shall be in such form and shall contain such information as the Authority may prescribe;
- (b) shall be given within 2 business days after the person becomes aware that he is or (if he has ceased to be one) had been a substantial shareholder; and
- (c) shall be given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in paragraph (b).

Duty of substantial shareholder to notify corporation of change in interests

136.—(1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a corporation in voting shares in the corporation, the substantial shareholder shall give notice in writing to the corporation within 2 business days after he becomes aware of the change.

(2) A notice under subsection (1) shall be in such form and shall contain such information as the Authority may prescribe.

(3) In subsection (1), “percentage level”, in relation to a substantial shareholder in a corporation, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

(a) all the voting shares (excluding treasury shares) in the corporation; or

(b) where the share capital of the corporation is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

Duty of person who ceases to be substantial shareholder to notify corporation

137.—(1) A person who ceases to be a substantial shareholder in a corporation shall give notice in writing to the corporation within 2 business days after he becomes aware that he has ceased to be a substantial shareholder.

(2) A notice under subsection (1) shall be in such form and shall contain such information as the Authority may prescribe.

Beneficial owner to ensure notification by person who holds, acquires or disposes of interests on his behalf

137A. Where a person authorises another person to hold, acquire or dispose of, on his behalf, voting shares or an interest or interests in voting shares in a corporation, he shall take reasonable steps to ensure that the second-mentioned person notifies him as soon as practicable and, in any case, no later than 2 business days after any acquisition or disposal of any of those voting shares or interest or interests in voting shares effected by the second-mentioned person on his behalf which will or may give rise to any duty on the part of the first-mentioned person to give notice under this Subdivision.

Notification by person who holds, acquires or disposes of interests for benefit of another person

137B. Where a person holds voting shares in a corporation, being voting shares in which another person has an interest, he shall give to the second-mentioned person a notice of any acquisition or disposal of any of those shares effected by him, in such form as the Authority may prescribe, as soon as practicable and, in any case, no later than 2 business days after acquiring or disposing of the shares.

Corporation to keep register of substantial shareholders

137C.—(1) A corporation shall keep a register in which it shall immediately enter —

- (a) the names of persons from whom it has received a notice under section 135; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137, the information given in that notice.

(2) The corporation shall keep the register at its registered office or, if the corporation does not have a registered office, at its principal place of business in Singapore and the register shall be open for inspection by a member of the corporation without charge, and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the corporation requires.

(3) A person may request the corporation to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the corporation requires for every page or part thereof required to be copied, and the corporation shall send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the corporation received the request.

(4) The Authority may at any time in writing require the corporation to furnish it with a copy of the register or any part of the register and the corporation shall send the copy to the Authority within 7 days after the day on which the corporation received the requirement.

(5) Any corporation which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

5 (6) A corporation is not, by reason of anything done under this Subdivision —

(a) to be taken for any purpose of the Companies Act (Cap. 50) to have notice of; or

(b) to be put upon inquiry as to,

10 a right of a person to or in relation to a share in the corporation.

Penalties under this Subdivision

137D.—(1) Any person who —

(a) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B; or

15 (b) in purported compliance with section 135, 136, 137 or 137B, furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

20 (i) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction; or

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(ii) in the case of a corporation, 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.

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(2) Any person who —

(a) contravenes section 135, 136(1) or (2), 137, 137A or 137B; or

- (b) in purported compliance with section 135, 136, 137 or 137B, furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Powers of court with respect to non-compliance by substantial shareholders

137E.—(1) Where a person is or has been a substantial shareholder in a corporation and has failed to comply with section 135, 136 or 137, a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

- (a) an order restraining the substantial shareholder from disposing of any interest in shares in the corporation in which he is or has been a substantial shareholder;
- (b) an order restraining a person who is, or is entitled to be the holder of the shares referred to in paragraph (a) from disposing of any interest in those shares;
- (c) an order restraining the exercise by any person of any voting or other rights attached to any share in the corporation in which the substantial shareholder has or has had an interest;
- (d) an order directing the corporation not to make payment, or to defer making payment, of any sum due from the corporation in respect of any share in which the substantial shareholder has or has had an interest;

- (e) an order directing the sale of any or all of the shares in the corporation in which the substantial shareholder has or has had an interest;
- (f) an order directing the corporation not to register or cause to be registered in the register of members the transfer or transmission of shares specified by the court;
- (g) an order directing the Depository (within the meaning of section 130A of the Companies Act (Cap. 50)) or any depository corporation not to register or cause to be registered the transfer or transmission of any shares or interest in shares in the corporation specified by the court;
- (h) an order that any exercise by any person of the voting or other rights attached to shares in the corporation specified by the court in which the substantial shareholder has or has had an interest be disregarded;
- (i) for the purposes of securing compliance with any other order made under this section, an order directing the corporation or any other person to do or refrain from doing an act specified by the court.

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

(3) An order made under this section directing the sale of any share may provide that the sale shall be made within such time and subject to such conditions, if any, as the court thinks fit, including, if the court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the corporation.

(4) Where a share is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold share is to vest in.

(5) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

Power of corporation to require disclosure of beneficial interest in its voting shares

137F.—(1) Any corporation may by notice in writing require any member of the corporation within such reasonable time as is specified in the notice —

(a) to inform it whether he holds any voting shares in the corporation as beneficial owner or as trustee; and

(b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(2) Where a corporation is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting shares in the

corporation, the corporation may by notice in writing require that other person within such reasonable time as is specified in the notice —

5 (a) to inform it whether he holds that interest as beneficial owner or as trustee; and

 (b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

10 (3) Any corporation may by notice in writing require any member of the corporation to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting shares in the corporation held by him are the subject of an agreement or arrangement under which another person is entitled to
15 control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

 (4) The notice referred to in subsection (1), (2) or (3) shall contain such other information as may be prescribed by the Authority, and the delivery of such notice shall comply with such requirements as may
20 be prescribed by the Authority.

 (5) Any person to whom a notice is issued under subsection (1), (2) or (3) shall comply with that notice.

 (6) Whenever a corporation receives information from a person pursuant to a requirement imposed on him under this section with
25 respect to shares held by a member of the corporation, it shall be under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 137C —

 (a) the fact that the requirement was imposed and the date on which it was imposed; and

30 (b) the information received pursuant to the requirement.

 (7) Section 137C shall apply in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

(8) Any person who —

- (a) intentionally or recklessly contravenes subsection (5); or
- (b) in purported compliance with subsection (5), furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- (i) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction; or
- (ii) in the case of a corporation, 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.

(9) Any person who —

- (a) contravenes subsection (5); or
- (b) in purported compliance with subsection (5), furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if he proves that the information in question was already in the possession of the corporation or that the requirement to give it was for any other reason frivolous or vexatious.

(11) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Subdivision (3) — Disclosure by corporation

Duty of corporation to make disclosure

137G.—(1) Where a corporation has been notified in writing by —

- (a) a director or chief executive officer of the corporation pursuant to a requirement imposed on him under section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) or (f), or under section 133(1)(g) in respect of a change in the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f); or
- (b) a substantial shareholder in the corporation pursuant to a requirement imposed on him under section 135, 136 or 137,

the corporation shall announce or otherwise disseminate the information stated in the notice to the securities market operated by the securities exchange on whose official list any or all of the shares of the corporation are listed, as soon as practicable and in any case, no later than the end of the business day following the day on which the corporation received the notice.

(2) The corporation shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

(3) Any corporation that —

- (a) intentionally or recklessly contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information knowing that it is false or misleading in a material particular or reckless as to whether it is,

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.

5 (4) Any corporation that —

- (a) contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

10 in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

15 (5) Where an offence has been committed by a corporation under subsection (3) or (4), any officer of the corporation who —

- (a) causes the corporation to contravene subsection (1);
- (b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is
20 false or misleading in a material particular; or
- (c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

25 (i) if he had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or
30 to imprisonment for a term not exceeding 2 years or to both; or

(ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

35 (6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager,

secretary or other similar officer of the corporation, and includes a person purporting to act in any such capacity.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- 5 (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under
- 10 section 137ZD(4), in respect of the same contravention.

*Division 2 — Disclosure of Interest in Business Trust and Interest in
Trustee-Manager of Business Trust*

Application and interpretation of this Division

15 **137H.**—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) A reference to a registered business trust is a reference to a registered business trust any or all of the units in which are listed for quotation on the official list of a securities exchange.

20 (3) A reference to a recognised business trust is a reference to a recognised business trust any or all of the units in which are listed for quotation on the official list of a securities exchange, such listing being a primary listing.

25 (4) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities under this Division; and in determining whether a person is deemed to have an interest in securities under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

- 30 (a) a subsidiary of the second-mentioned person;
- (b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities; or

(c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities.

(5) Section 130(6) and (7) shall apply for the purposes of —

(a) sections 135(2)(b), 136(1) and 137(1) as applied by section 137J(1); and

(b) sections 137L(6), 137N(2)(b)(i), 137P(1) and 137R(1),

as they apply for the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6).

Persons obliged to comply with this Division and power of Authority to grant exemption or extension

137I.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

(4) The Authority may by notice in writing impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons shall comply with such conditions or restrictions.

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

(6) The Authority may, on the application of a person required to give a notice under this Division, in its discretion, extend, or further extend, the time for giving the notice.

*Subdivision (1) — Disclosure by substantial unitholders
of business trust*

Duty of substantial unitholder to notify trustee-manager of his interests

5 **137J.**—(1) Sections 135 to 137B shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of a registered business trust or recognised business trust as though —

- 10 (a) references to the corporation to which notification should be given were references to the trustee-manager of the business trust;
- (b) references to shares or voting shares in the corporation were references to units or voting units in the business trust; and
- 15 (c) references to a substantial shareholder in the corporation were references to a substantial unitholder of the business trust,

and such person shall comply with those provisions accordingly.

(2) Any person to whom subsection (1) applies who —

- 20 (a) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or
- (b) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

25 shall be guilty of an offence and shall —

- 30 (i) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction; or
- (ii) in the case of a corporation, 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.

(3) Any person to whom subsection (1) applies who —

(a) contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(b) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(4) No proceedings shall be instituted against a person for an offence under this section after —

(a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Trustee-manager to keep register of substantial unitholders

137K.—(1) The trustee-manager of a registered business trust or recognised business trust shall keep a register in which it shall immediately enter —

(a) the names of persons from whom it has received a notice under section 135 as applied by section 137J(1); and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137 as applied by section 137J(1), the information given in that notice.

(2) The trustee-manager shall keep the register at its registered office or, if the trustee-manager does not have a registered office, at its principal place of business in Singapore, and the register shall be

open for inspection by a unitholder of the business trust without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the trustee-manager requires.

(3) A person may request the trustee-manager to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the trustee-manager requires for every page or part thereof required to be copied, and the trustee-manager shall send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the trustee-manager received the request.

(4) The Authority may at any time in writing require the trustee-manager to furnish it with a copy of the register or any part of the register and the trustee-manager shall send the copy to the Authority within 7 days after the day on which the trustee-manager received the requirement.

(5) Any trustee-manager which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Powers of court with respect to non-compliance by substantial unitholders

137L.—(1) Where a person is or has been a substantial unitholder of a registered business trust or recognised business trust and has failed to comply with section 135, 136 or 137 as applied by section 137J(1), a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

- (a) an order restraining the substantial unitholder from disposing of any interest in units in the business trust of which he is or has been a substantial unitholder;
- (b) an order restraining a person who is, or is entitled to be, the holder of the units referred to in paragraph (a) from disposing of any interest in those units;

- (c) an order restraining the exercise by any person of any voting or other rights attached to any unit in the business trust in which the substantial unitholder has or has had an interest;
- 5 (d) an order directing the trustee-manager of the business trust not to make payment, or to defer making payment, out of the property of the business trust of any sum due in respect of any unit in which the substantial unitholder has or has had an interest;
- 10 (e) an order directing the sale of any or all of the units in the business trust in which the substantial unitholder has or has had an interest;
- 15 (f) an order directing the trustee-manager of the business trust not to register or cause to be registered in the register of unitholders the transfer or transmission of units specified by the court;
- 20 (g) an order directing the Depository (within the meaning of section 130A of the Companies Act (Cap. 50)) or any depository corporation not to register or cause to be registered the transfer or transmission of any units or interest in units in the business trust specified by the court;
- 25 (h) an order that any exercise by any person of the voting or other rights attached to units in the business trust specified by the court in which the substantial unitholder has or has had an interest be disregarded;
- (i) for the purposes of securing compliance with any other order made under this section, an order directing the trustee-manager of the business trust or any other person to do or refrain from doing an act specified by the court.

30 (2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

35 (3) An order made under this section directing the sale of any unit may provide that the sale shall be made within such time and subject to such conditions, if any, as the court thinks fit, including, if the court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the business trust.

(4) Where a unit is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold unit is to vest in.

(5) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the substantial unitholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

Power of trustee-manager to require disclosure of beneficial interest in voting units

137M.—(1) The trustee-manager of a registered business trust or recognised business trust may by notice in writing require any unitholder of the business trust within such reasonable time as is specified in the notice —

(a) to inform it whether he holds any voting units in the business trust as beneficial owner or as trustee; and

(b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(2) Where the trustee-manager of a registered business trust or recognised business trust is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in the business trust, the trustee-manager may by notice in writing require that other person within such reasonable time as is specified in the notice —

(a) to inform it whether he holds that interest as beneficial owner or as trustee; and

(b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

(3) The trustee-manager of a registered business trust or recognised business trust may by notice in writing require any unitholder of the business trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the business trust held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

(4) The notice referred to in subsection (1), (2) or (3) shall contain such other information as may be prescribed by the Authority, and the delivery of such notice shall comply with such requirements as may be prescribed by the Authority.

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) shall comply with that notice.

(6) Whenever the trustee-manager of a registered business trust or recognised business trust receives information from a person pursuant to a requirement imposed on him under this section with respect to units held by a unitholder of the business trust, it shall be under an

obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137K —

(a) the fact that the requirement was imposed and the date on which it was imposed; and

5 (b) the information received pursuant to the requirement.

(7) Section 137K shall apply in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

10 (8) Any person who —

(a) intentionally or recklessly contravenes subsection (5); or

(b) in purported compliance with subsection (5), furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

15 shall be guilty of an offence and shall —

(i) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction; or

20 (ii) in the case of a corporation, 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.

25 (9) Any person who —

(a) contravenes subsection (5); or

30 (b) in purported compliance with subsection (5), furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not

exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if he proves that the information in question was already in the possession of the trustee-manager of the registered business trust or recognised business trust, or that the requirement to give it was for any other reason frivolous or vexatious.

(11) No proceedings shall be instituted against a person for an offence under this section after —

(a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Subdivision (2) — Disclosure by directors and chief executive officer of trustee-manager of business trust

Duty of director and chief executive officer of trustee-manager to notify his interests

137N.—(1) Every director and chief executive officer of the trustee-manager of a registered business trust or recognised business trust shall give notice in writing to the trustee-manager of particulars of —

(a) units or derivatives of units in the business trust, being units or derivatives of units held by him, or in which he has an interest and the nature and extent of that interest;

(b) debentures or units of debentures of the business trust which are held by him, or in which he has an interest and the nature and extent of that interest;

(c) such other securities as the Authority may prescribe which are held, whether directly or indirectly, by him, or in which he has an interest and the nature and extent of that interest; and

(*d*) any change in respect of the particulars of any matter referred to in paragraphs (*a*), (*b*) and (*c*).

(2) A notice under subsection (1) —

(*a*) shall be in such form and shall contain such information as the Authority may prescribe; and

(*b*) shall be given —

(i) in the case of a notice under subsection (1)(*d*), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, derivatives of units, debentures, units of debentures or other securities referred to in subsection (1),

whichever last occurs.

(3) For the purposes of this section, a director or chief executive officer of a trustee-manager shall be deemed to have an interest in securities referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the trustee-manager), as the case may be, has an interest in those securities.

(4) In this section —

“family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter below the age of 21 years;

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

Penalties under this Subdivision

137O.—(1) Any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who —

- 5 (a) intentionally or recklessly contravenes section 137N(1) or (2); or
- (b) in purported compliance with section 137N, furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

10 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both 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.

15 (2) Any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who —

- (a) contravenes section 137N(1) or (2); or
- (b) in purported compliance with section 137N, furnishes any information which is false or misleading in a material
- 20 particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the

25 offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same
- 30 contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Subdivision (3) — Disclosure by holders of voting shares in trustee-manager

Duty of holders of voting shares in trustee-manager to notify trustee-manager

5 **137P.**—(1) Where the percentage of interest of a person in the voting shares in a trustee-manager of a registered business trust or recognised business trust reaches, crosses or falls below 15%, 30%, 50% or 75%, he shall give notice in writing to the trustee-manager within 2 business days after he becomes aware of this.

10 (2) A notice under subsection (1) shall be in such form and shall contain such information as the Authority may prescribe.

(3) In subsection (1), the percentage of interest of a person in the voting shares in a trustee-manager of a registered business trust or recognised business trust is ascertained by expressing the total votes attached to all the voting shares in which he has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

20 (a) all the voting shares (excluding treasury shares) in the trustee-manager; or

(b) where the share capital of the trustee-manager is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

Penalties under this Subdivision

137Q.—(1) Any person who —

(a) intentionally or recklessly contravenes section 137P(1) or (2); or

30 (b) in purported compliance with section 137P, furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(i) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction; or

(ii) in the case of a corporation, 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.

(2) Any person who —

(a) contravenes section 137P(1) or (2); or

(b) in purported compliance with section 137P, furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

(a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Subdivision (4) — Disclosure by trustee-manager

Duty of trustee-manager of business trust to make disclosure

137R.—(1) Where the trustee-manager of a registered business trust or recognised business trust —

(a) acquires or disposes of interests in units or derivatives of units in, or debentures or units of debentures of, the business trust; or

(b) has been notified in writing by —

5 (i) a substantial unitholder of the business trust pursuant to a requirement imposed on him under section 135, 136 or 137 as applied by section 137J(1);

(ii) a director or chief executive officer of the trustee-manager pursuant to a requirement imposed on him
10 under section 137N; or

(iii) a person who holds an interest or interests in voting shares in the trustee-manager pursuant to a requirement imposed on him under section 137P,

the trustee-manager shall announce or otherwise disseminate the
15 particulars of the acquisition or disposal, or the information stated in the notice it received, as the case may be, to the securities market operated by the securities exchange on whose official list any or all of the units in the business trust are listed, as soon as practicable and in any case no later than the end of the business day following the day
20 on which the trustee-manager became aware of the acquisition or disposal, or received the notice.

(2) The trustee-manager shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

25 (3) Any trustee-manager of a registered business trust or recognised business trust that —

(a) intentionally or recklessly contravenes subsection (1) or (2);
or

(b) in purported compliance with this section, announces or
30 disseminates any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

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
35 further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(4) Any trustee-manager of a registered business trust or recognised business trust that —

(a) contravenes subsection (1) or (2); or

(b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(5) Where an offence has been committed by a trustee-manager under subsection (3) or (4), any officer of the trustee-manager who —

(a) causes the trustee-manager to contravene subsection (1);

(b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or

(c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

(i) if he had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both; or

(ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

(6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the trustee-manager, and includes a person purporting to act in any such capacity.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Division 3 — Disclosure of Interests in Real Estate Investment Trust and Interests in Shares of Responsible Person

Application and interpretation of this Division

137S.—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(2) In this Division —

“real estate investment trust” means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and any or all the units in which are listed, by way of a primary listing, for quotation on the official list of a securities exchange;

“trustee” means —

- (a) in relation to a real estate investment trust authorised under section 286, the trustee approved under section 289 for the trust; and
- (b) in relation to any other real estate investment trust, an entity equivalent to a trustee referred to in paragraph (a).

(3) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities under this Division; and in determining whether a person is deemed to have an interest in securities under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

- (a) a subsidiary of the second-mentioned person;

- (b) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities; or
- 5 (c) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to those securities.
- 10 (4) Section 130(6) and (7) shall apply for the purposes of —
 - (a) sections 135(2)(b), 136(1) and 137(1) as applied by section 137U(1); and
 - (b) sections 137W(6), 137Y(2)(b)(i), 137ZA(1) and 137ZC(1),
 as they apply for the purposes of sections 133(3)(b)(i), 135(2)(b),
 15 136(1), 137(1) and 137E(6).

Persons obliged to comply with Division and power of Authority to grant exemption or extension

137T.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether
 20 citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

25 (3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

(4) The Authority may by notice in writing impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons shall
 30 comply with such conditions or restrictions.

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000

for every day or part thereof during which the offence continues after conviction.

(6) The Authority may, on the application of a person required to give a notice under this Division, in its discretion, extend, or further extend, the time for giving the notice.

Subdivision (1) — Disclosure by substantial unitholders of real estate investment trust

Duty of substantial unitholder to notify trustee and responsible person of his interests

137U.—(1) Sections 135 to 137B shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of a real estate investment trust as though —

(a) references to the corporation to which notification should be given were references to —

(i) the trustee of the real estate investment trust; and

(ii) the responsible person for the real estate investment trust;

(b) references to shares or voting shares in the corporation were references to units or voting units in the real estate investment trust; and

(c) references to a substantial shareholder in the corporation were references to a substantial unitholder of the real estate investment trust,

and such person shall comply with those provisions accordingly.

(2) Any person to whom subsection (1) applies who —

(a) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

(b) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- 5 (i) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction; or
- 10 (ii) in the case of a corporation, 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.
- (3) Any person to whom subsection (1) applies who —

 - (a) contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or
 - 15 (b) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.
- (4) No proceedings shall be instituted against a person for an offence under this section after —

 - 25 (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
 - 30 (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Trustee to keep register of substantial unitholders

137V.—(1) The trustee of a real estate investment trust shall keep a register in which it shall immediately enter —

- 35 (a) the names of persons from whom it has received a notice under section 135 as applied by section 137U(1); and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137 as applied by section 137U(1), the information given in that notice.

5 (2) The trustee shall keep the register at its registered office or, if the trustee does not have a registered office, at its principal place of business in Singapore, and the register shall be open for inspection by a unitholder of the real estate investment trust without charge and by
10 any other person on payment for each inspection of a sum of \$2 or such lesser sum as the trustee requires.

(3) A person may request the trustee to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the trustee requires for every page or part thereof required to be copied, and the trustee shall send the copy to
15 that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the trustee received the request.

(4) The Authority may at any time in writing require the trustee to furnish it with a copy of the register or any part of the register and the trustee shall send the copy to the Authority within 7 days after the
20 day on which the trustee received the requirement.

(5) Any trustee which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence,
25 to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Powers of court with respect to non-compliance by substantial unitholders

30 **137W.**—(1) Where a person is or has been a substantial unitholder of a real estate investment trust and has failed to comply with section 135, 136 or 137 as applied by section 137U(1), a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

35 (a) an order restraining the substantial unitholder from disposing of any interest in units in the real estate

investment trust of which he is or has been a substantial unitholder;

- 5 (b) an order restraining a person who is, or is entitled to be, the holder of units referred to in paragraph (a) from disposing of any interest in those units;
- (c) an order restraining the exercise by any person of any voting or other rights attached to any unit in the real estate investment trust in which the substantial unitholder has or has had an interest;
- 10 (d) an order directing the trustee of the real estate investment trust not to make payment, or to defer making payment, out of the property of the trust of any sum due in respect of any unit in which the substantial unitholder has or has had an interest;
- 15 (e) an order directing the sale of any or all of the units in the real estate investment trust in which the substantial unitholder has or has had an interest;
- 20 (f) an order directing the trustee of the real estate investment trust not to register or cause to be registered in the register of unitholders the transfer or transmission of units specified by the court;
- 25 (g) an order directing the Depository (within the meaning of section 130A of the Companies Act (Cap. 50)) or any depository corporation not to register or cause to be registered the transfer or transmission of any units or interest in units in the real estate investment trust specified by the court;
- 30 (h) an order that any exercise by any person of the voting or other rights attached to units in the real estate investment trust specified by the court in which the substantial unitholder has or has had an interest be disregarded;
- 35 (i) for the purposes of securing compliance with any other order made under this section, an order directing the responsible person for or the trustee of the real estate investment trust, or any other person, to do or refrain from doing an act specified by the court.

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

(3) An order made under this section directing the sale of any unit may provide that the sale shall be made within such time and subject to such conditions, if any, as the court thinks fit, including, if the court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the real estate investment trust.

(4) Where a unit is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold unit is to vest in.

(5) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the substantial unitholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

Power of trustee to require disclosure of beneficial interest in voting units

5 **137X.**—(1) The trustee of a real estate investment trust may by notice in writing require any unitholder of the trust within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds any voting units in the trust as beneficial owner or as trustee; and
- (b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other
10 particulars sufficient to enable those persons to be identified) and the nature of their interest.

15 (2) Where the trustee of a real estate investment trust is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in the trust, the trustee may by notice in writing require that other person within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds that interest as beneficial owner or as trustee; and
- 20 (b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

25 (3) The trustee of a real estate investment trust may by notice in writing require any unitholder of the trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the trust held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to
30 give particulars of the agreement or arrangement and the parties to it.

(4) The notice referred to in subsection (1), (2) or (3) shall contain such other information as may be prescribed by the Authority, and the delivery of such notice shall comply with such requirements as may be prescribed by the Authority.

35 (5) Any person to whom a notice is issued under subsection (1), (2) or (3) shall comply with that notice.

(6) Whenever the trustee of a real estate investment trust receives information from a person pursuant to a requirement imposed on him under this section with respect to units held by a unitholder of the trust, it shall be under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137V —

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received pursuant to the requirement.

(7) Section 137V shall apply in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

(8) Any person who —

- (a) intentionally or recklessly contravenes subsection (5); or
- (b) in purported compliance with subsection (5), furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- (i) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction; or
- (ii) in the case of a corporation, 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.

(9) Any person who —

- (a) contravenes subsection (5); or
- (b) in purported compliance with subsection (5), furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if he proves that the information in question was already in the possession of the trustee of the real estate investment trust, or that the requirement to give it was for any other reason frivolous or vexatious.

(11) No proceedings shall be instituted against a person for an offence under this section after —

(a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Subdivision (2) — Disclosure by directors and chief executive officer of responsible person

Duty of director and chief executive officer of responsible person to notify his interests

137Y.—(1) Every director and chief executive officer of the responsible person for a real estate investment trust shall give notice in writing to the responsible person of particulars of —

(a) units in the trust, being units held by him, or in which he has an interest and the nature and extent of that interest;

(b) debentures or units of debentures of the trust which are held by him, or in which he has an interest and the nature and extent of that interest;

(c) such other securities, as the Authority may prescribe, which are held, whether directly or indirectly, by him, or in which he has an interest and the nature and extent of that interest; and

(*d*) any change in respect of the particulars of any matter referred to in paragraphs (*a*), (*b*) and (*c*).

(2) A notice under subsection (1) —

(*a*) shall be in such form and shall contain such information as the Authority may prescribe; and

(*b*) shall be given —

(i) in the case of a notice under subsection (1)(*d*), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, debentures, units of debentures or other securities referred to in subsection (1),

whichever last occurs.

(3) For the purposes of this section, a director or chief executive officer of a responsible person shall be deemed to have an interest in securities referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the responsible person), as the case may be, has an interest in those securities.

(4) In this section —

“family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter below the age of 21 years;

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

Penalties under this Subdivision

137Z.—(1) Any director or chief executive officer of the responsible person for a real estate investment trust who —

(a) intentionally or recklessly contravenes section 137Y(1) or (2); or

(b) in purported compliance with section 137Y, furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both 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.

(2) Any director or chief executive officer of the responsible person for a real estate investment trust who —

(a) contravenes section 137Y(1) or (2); or

(b) in purported compliance with section 137Y, furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

(a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Subdivision (3) — Disclosure by holders of voting shares in responsible person

Duty of holders of voting shares in responsible person to notify responsible person

5 **137ZA.**—(1) Where the percentage of interest of a person in the voting shares in a responsible person for a real estate investment trust reaches, crosses or falls below 15%, 30%, 50% or 75%, he shall give notice in writing to the responsible person within 2 business days after he becomes aware of this.

10 (2) A notice under subsection (1) shall be in such form and shall contain such information as the Authority may prescribe.

(3) In subsection (1), the percentage of interest of a person in the voting shares in a responsible person for a real estate investment trust is ascertained by expressing the total votes attached to all the voting shares in which he has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

(a) all the voting shares (excluding treasury shares) in the responsible person; or

20 (b) where the share capital of the responsible person is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

25 **Penalties under this Subdivision**

137ZB.—(1) Any person who —

(a) intentionally or recklessly contravenes section 137ZA(1) or (2); or

30 (b) in purported compliance with section 137ZA, furnishes any information which he knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- (i) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction; or
- (ii) in the case of a corporation, 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.

(2) Any person who —

- (a) contravenes section 137ZA(1) or (2); or
- (b) in purported compliance with section 137ZA, furnishes any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Subdivision (4) — Disclosure by responsible person

Duty of responsible person for real estate investment trust to make disclosure

137ZC.—(1) Where the responsible person for a real estate investment trust —

(a) acquires or disposes of interests in units in, or debentures or units of debentures of, the real estate investment trust; or

(b) has been notified in writing by —

5 (i) a substantial unitholder of the real estate investment trust pursuant to a requirement imposed on him under section 135, 136 or 137 as applied by section 137U(1);

(ii) a director or chief executive officer of the responsible person pursuant to a requirement imposed on him under section 137Y; or

10 (iii) a person who holds an interest or interests in voting shares in the responsible person pursuant to a requirement imposed on him under section 137ZA,

the responsible person shall announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in
15 the notice it received, as the case may be, to the securities market operated by the securities exchange on whose official list any or all of the units in the trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which the responsible person became aware of the acquisition or disposal, or
20 received the notice.

(2) The responsible person shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

(3) Any responsible person for a real estate investment trust that —

25 (a) intentionally or recklessly contravenes subsection (1) or (2);
or

(b) in purported compliance with this section, announces or disseminates any information which he knows is false or misleading in a material particular or is reckless as to
30 whether it is,

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.

(4) Any responsible person for a real estate investment trust that —

- (a) contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

(5) Where an offence has been committed by a responsible person under subsection (3) or (4), any officer of the responsible person who —

- (a) causes the responsible person to contravene subsection (1);
- (b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or
- (c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

- (i) if he had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

(6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the responsible person, and includes a person purporting to act in any such capacity.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

Division 4 — Civil Penalty

Civil penalty

137ZD.—(1) Whenever it appears to the Authority that any person has —

- (a) intentionally or recklessly, contravened any of the following provisions:
 - (i) section 133(1) or (3), 135, 136(1) or (2), 137, 137A, 137B, 137F(5), 137G(1) or (2), 137M(5), 137N(1) or (2), 137P(1) or (2), 137R(1) or (2), 137X(5), 137Y(1) or (2), 137ZA(1) or (2) or 137ZC(1) or (2);
 - (ii) section 135, 136, 137, 137A or 137B as applied by section 137J(1);
 - (iii) section 135, 136, 137, 137A or 137B as applied by section 137U(1);
- (b) in purported compliance with any of the following provisions, furnished, announced or disseminated any information which he knows is false or misleading in a material particular or is reckless as to whether it is:
 - (i) section 133, 135, 136, 137, 137B, 137F(5), 137G, 137M(5), 137N, 137P, 137R, 137X(5), 137Y, 137ZA or 137ZC;
 - (ii) section 135, 136, 137 or 137B as applied by section 137J(1);
 - (iii) section 135, 136, 137 or 137B as applied by section 137U(1); or

(c) being an officer of a corporation to which Division 1 applies, an officer of a trustee-manager of a registered or recognised business trust to which Division 2 applies, or an officer of a responsible person for a real estate investment trust to which Division 3 applies, intentionally or recklessly committed an act referred to in subsection (5)(a), (b) or (c) of section 137G, 137R or 137ZC (as the case may be),

the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the person to seek an order for a civil penalty in respect of that act.

(2) If the court is satisfied on a balance of probabilities that subsection (1)(a), (b) or (c) (as the case may be) has been proved, the court may make an order against the person for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(3) Notwithstanding subsection (2), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of having committed an act referred to in subsection (1)(a), (b) or (c) (whichever is applicable), and the order may be made on such terms as may be agreed between the Authority and the person.

(4) Nothing in this section shall be construed to prevent the Authority from entering into an agreement with the person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) for an act referred to in subsection (1)(a), (b) or (c).

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

(6) If the person fails to pay the civil penalty imposed on him within the time specified in the court order referred to in subsection (3) or specified under the agreement referred to in subsection (4), the Authority may recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

(7) Any defence that is available to a person who is prosecuted for an act under subsection (1)(a), (b) or (c), shall also be available to a person against whom an action is brought under this section for the same act.

Action under section 137ZD not to commence, etc., in certain situations

137ZE.—(1) An action under section 137ZD for an act referred to in subsection (1)(a), (b) or (c) of that section shall not be commenced against any person —

- (a) after the expiration of 6 years from the date of the act; or
- (b) if the person has been convicted or acquitted in criminal proceedings instituted against him for that act, except where he has been acquitted because of the withdrawal of the charge against him.

(2) An action under section 137ZD against any person for an act referred to in subsection (1)(a), (b) or (c) of that section shall be stayed after criminal proceedings have been commenced against him for that act, and may thereafter be continued only if —

- (a) that person has been discharged in respect of that act and the discharge does not amount to an acquittal; or
- (b) the charge against him in respect of that act has been withdrawn.

Jurisdiction of District Court

137ZF. A District Court shall have jurisdiction to hear and determine any action under section 137ZD regardless of the monetary amount.

Rules of Court

137ZG. Rules of Court (Cap. 322, R 5) may be made —

- (a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under section 137ZD; and
- (b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.”.

Amendment of Division heading in Part IX

43. Part IX of the principal Act is amended by deleting the words “of Authority” in the heading to Division 1.

Amendment of section 143

44. Section 143(1) of the principal Act is amended by inserting, immediately after paragraph (a), the following paragraph:

5 “(aa) it may be necessary to give a direction or take any action under section 34 or 81 in relation to securities of, or made available by, a corporation;”.

Amendment of section 144

45. Section 144(1) of the principal Act is amended by deleting the word “or” at the end of paragraph (a) and by inserting immediately thereafter
10 the following paragraph:

“(aa) it may be necessary to give a direction or take any action in relation to futures contracts under section 81; or”.

Amendment of section 150

46. Section 150(1) of the principal Act is amended by deleting the
15 words “an approved holding company, a securities exchange, a futures exchange, a recognised market operator, a person operating an exempt market, an exempt market operator, a designated clearing house,” and substituting the words “an approved exchange, a recognised market operator, an exempt market operator, a person operating a clearing
20 facility, a designated clearing house, an approved holding company,”.

New sections 150A, 150B and 150C

47. The principal Act is amended by inserting, immediately after section 150, the following sections:

“Confidentiality of inspection reports

25 **150A.**—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority upon an inspection under section 150 in respect of any approved exchange, recognised market operator, exempt market operator, person operating a clearing facility, designated clearing house, approved
30 holding company, holder of a capital markets services licence, exempt person or representative (referred to in this section as the inspected person) and is provided by the Authority to the inspected person, the report shall not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or

auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

- 5 (a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that inspected person;
- 10 (b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person; or
- (c) to such other person as the Authority may approve in writing.

15 (3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

20 (4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

25 (5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

30 (6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

- (a) the disclosure was made contrary to his desire;
- 35 (b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered

or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

- (c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

Subdivision (3) — Inspection powers of foreign regulatory authority

Inspection by foreign regulatory authority

150B.—(1) No authority of a country or territory other than Singapore may conduct an inspection in Singapore of the books of —

- (a) the holder of a capital markets services licence; or
 (b) a person exempted under section 99(1)(a), (b), (c), (d) or (h) from the requirement to hold a capital markets services licence,

except a foreign regulatory authority with the prior written approval of the Authority and under conditions of secrecy.

(2) In deciding whether to grant approval to a foreign regulatory authority under subsection (1), the Authority may have regard to the following considerations:

- (a) whether the inspection, and the information obtained in the course of the inspection, is required by the foreign regulatory authority for the sole purpose of enabling the foreign regulatory authority to carry out its regulatory functions;
 (b) whether the foreign regulatory authority has regulatory oversight in its jurisdiction over the holder of the capital markets services licence or the person exempted under section 99(1)(a), (b), (c), (d) or (h), as the case may be;
 (c) whether the foreign regulatory authority is prohibited by the laws applicable to it from disclosing information obtained by it in the course of the inspection to any other person;

(d) whether the foreign regulatory authority has provided or is willing to provide similar assistance to the Authority; and

(e) such other matters as the Authority may consider relevant.

(3) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, impose conditions or restrictions on the foreign regulatory authority relating to —

(a) the classes of information to which the foreign regulatory authority shall or shall not have access in the course of the inspection;

(b) the conduct of the inspection;

(c) the use or disclosure of any information obtained in the course of the inspection; and

(d) such other matters as the Authority may determine.

(4) The Authority may, in relation to an inspection by a foreign regulatory authority conducted or to be conducted under this section on the holder of a capital markets services licence or a person exempted under section 99(1)(a), (b), (c), (d) or (h), at any time, by notice in writing to the holder or person exempted, impose such conditions or restrictions on the holder or person exempted as it may think fit, and the holder or person exempted shall comply with such conditions or restrictions.

(5) For the purposes of this section and section 150C, a reference to a foreign regulatory authority is a reference to an authority of a country or territory other than Singapore, exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act (Cap. 186).

Confidentiality of inspection report by foreign regulatory authority

150C.—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by a foreign regulatory authority upon an inspection under section 150B in respect of any holder of a capital markets services licence or person exempted under section 99(1)(a), (b), (c), (d) or (h) (referred to in this section as the inspected person) and is provided by the foreign

regulatory authority to the inspected person, the report shall not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

5 (2) Disclosure of the report referred to in subsection (1) may be made —

(a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in
10 that inspected person;

(b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person;

15 (c) to the Authority, if requested by the Authority; or

(d) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(d), the Authority may impose such conditions or restrictions as it
20 thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his
25 employment or appointment by the inspected person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

30 (6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2
35 years or to both, unless he proves that —

(a) the disclosure was made contrary to his desire;

- (b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- 5 (c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the
- 10 Authority.”.

New section 152A

48. The principal Act is amended by inserting, immediately after section 152, the following section:

“Confidentiality of investigation reports

15 **152A.**—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by the Authority in respect of any investigation under section 152 and is provided by the Authority to the person under investigation (referred to in this section as the investigated person), the report shall not be disclosed by the

20 investigated person or, if the investigated person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made —

- 25 (a) by the investigated person to any officer or auditor of that investigated person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that investigated person;
- (b) by any officer or auditor of the investigated person to any
- 30 other officer or auditor of that investigated person, solely in connection with the performance of their duties in that investigated person; or
- (c) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, any of its officers or auditors or the person to whom disclosure is approved, and that person shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the investigated person.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to him in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.”.

Amendment of section 153

49. Section 153(2) of the principal Act is amended by deleting the words “under this section” in paragraph (a) and substituting the words “for an offence under section 162(3)”.

New Division 4 of Part IX

50. The principal Act is amended by inserting, immediately after section 168, the following Division and sections:

“Division 4 — Transfer of Evidence

5 Interpretation of this Division

168A. In this Division —

“Commercial Affairs Officer” means a Commercial Affairs Officer appointed under section 64 of the Police Force Act (Cap. 235);

10 “police officer” means a member of the Singapore Police Force who is deployed in the Commercial Affairs Department of that Force.

Evidence obtained by Authority may be used in criminal investigations and proceedings

15 **168B.**—(1) Notwithstanding the provisions of any written law or any rule of law, the Authority may furnish any book, document, written record of any examination or other information obtained by the Authority in the exercise of its powers under this Part to —

(a) a police officer;

20 (b) a Commercial Affairs Officer; or

(c) the Public Prosecutor,

for the purposes of any investigation into or criminal proceedings against a person for an alleged contravention of any provision under Part XII.

25 (2) For the avoidance of doubt, any book, document, written record of examination or other information furnished by the Authority under subsection (1) shall not be inadmissible in any criminal proceedings by reason only that it was first obtained by the Authority in the exercise of its powers under this Act, and the admissibility thereof
30 shall be determined in accordance with the rules of evidence under written law and any relevant rules of law.

Evidence obtained in police investigations may be used in civil proceedings

168C.—(1) Notwithstanding the provisions of any written law or any rule of law, any book, document, statement or other information obtained by a police officer or a Commercial Affairs Officer in the exercise of his powers under Chapters VI and XIII of the Criminal Procedure Code (Cap. 68) may be furnished to the Authority, if the Public Prosecutor is satisfied that such information is necessary to enable the Authority to investigate or bring an action for a civil penalty order against a person in respect of a contravention of any provision in Part XII.

(2) For the avoidance of doubt, any book, document, statement or other information furnished to the Authority under subsection (1) shall not be inadmissible in any civil proceedings under this Act to which the Authority is a party by reason only that it was first obtained by a police officer or a Commercial Affairs Officer in the exercise of his powers under the Criminal Procedure Code, and the admissibility thereof shall be determined in accordance with the rules of evidence under written law and any relevant rules of law.”.

Amendment of section 186

51. Section 186 of the principal Act is amended by deleting subsection (14) and substituting the following subsection:

“(14) In this section, any reference to dealing in securities or trading of a futures contract is a reference to such dealing or trading which is done or to be done —

- (a) on the approved exchange which establishes, keeps and administers the fidelity fund; or
- (b) through a trading linkage of the approved exchange with an overseas securities exchange or an overseas futures exchange.”.

Amendment of section 196A

52. Section 196A of the principal Act is amended —

- (a) by deleting the word “or” at the end of paragraph (a)(ii) of the definition of “securities”;

- (b) by deleting the comma at the end of paragraph (a)(iii)(C) of the definition of “securities” and substituting the word “; or”;
- (c) by inserting, immediately after sub-paragraph (iii) of paragraph (a) of the definition of “securities”, the following sub-paragraph:
 - 5 “(iv) such other product or class of products as the Authority may prescribe,”;
- (d) by deleting the word “or” at the end of paragraph (a)(CC) of the definition of “securities”;
- (e) by inserting the word “or” at the end of sub-paragraph (DD) of paragraph (a) of the definition of “securities” and by inserting immediately thereafter the following sub-paragraph:
 - 10 “(EE) such other product or class of products as the Authority may prescribe as not being securities,”;
- (f) by deleting the word “or” at the end of paragraph (b)(iii) of the definition of “securities”;
 - 15
- (g) by deleting the comma at the end of paragraph (b)(iv) of the definition of “securities” and substituting the word “; or”;
- (h) by inserting, immediately after sub-paragraph (iv) of paragraph (b) of the definition of “securities”, the following sub-paragraph:
 - 20 “(v) such other product or class of products as the Authority may prescribe,”;
- (i) by deleting the word “or” at the end of paragraph (b)(B) of the definition of “securities”; and
- (j) by deleting the word “and” at the end of sub-paragraph (C) of paragraph (b) of the definition of “securities” and substituting the word “or”, and by inserting immediately thereafter the following sub-paragraph:
 - 25 “(D) such other product or class of products as the Authority may prescribe as not being securities; and”.

30 **Amendment of section 204**

53. Section 204 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

(a) a court has made an order against him for the payment of a civil penalty under section 232; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.”.

10 **Amendment of section 212**

54. Section 212 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

(a) a court has made an order against him for the payment of a civil penalty under section 232; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.”.

Amendment of section 214

55. Section 214 of the principal Act is amended —

(a) by deleting the word “or” at the end of paragraph (a)(iii)(C) of the definition of “securities”;

(b) by inserting the word “or” at the end of sub-paragraph (iv) of paragraph (a) of the definition of “securities” and by inserting immediately thereafter the following sub-paragraph and words:

“(v) such other product or class of products as the Authority may prescribe,

but does not include such product or class of products as the Authority may prescribe as not being securities;”;

- (c) by deleting the word “or” at the end of paragraph (b)(iii) of the definition of “securities”;
- (d) by deleting the word “and” at the end of paragraph (b)(iv) of the definition of “securities” and substituting the word “or”;
- 5 (e) by inserting, immediately after sub-paragraph (iv) of paragraph (b) of the definition of “securities”, the following sub-paragraph and words:
 - “(v) such other product or class of products as the Authority may prescribe,
 - 10 but does not include such product or class of products as the Authority may prescribe as not being securities; and”;
- (f) by deleting the word “or” at the end of paragraph (c)(vi)(C) of the definition of “securities”;
- (g) by deleting the comma at the end of paragraph (c)(vii) of the definition of “securities” and substituting the word “; or”;
- 15 (h) by inserting, immediately after sub-paragraph (vii) of paragraph (c) of the definition of “securities”, the following sub-paragraph:
 - “(viii) such other product or class of products as the Authority may prescribe,”;
- 20 (i) by deleting the word “or” at the end of paragraph (c)(BB) of the definition of “securities”; and
- (j) by inserting the word “or” at the end of sub-paragraph (CC) of paragraph (c) of the definition of “securities” and by inserting immediately thereafter the following sub-paragraph:
 - 25 “(DD) such other product or class of products as the Authority may prescribe as not being securities;”.

Amendment of section 218

56. Section 218 of the principal Act is amended —

- 30 (a) by deleting the word “only” in subsection (1A)(a)(ii) (2nd line) and substituting the word “primarily”;
- (b) by deleting the words “within the meaning of Division 4 of Part IV of the Companies Act (Cap. 50)” in subsection (5)(b)(ii); and

- (c) by deleting the words “within the meaning of Division 4 of Part IV of the Companies Act” in subsection (5)(b)(iii)(B).

Amendment of section 221

5 **57.** Section 221 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after —

- (a) a court has made an order against him for the payment of a civil penalty under section 232; or
- 10 (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.”.

Amendment of section 230

15 **58.** Section 230(1) of the principal Act is amended by deleting the words “licensed person” wherever they appear in paragraphs (a), (b) and (c) and substituting in each case the words “holder or representative”.

Amendment of section 234

59. Section 234 of the principal Act is amended —

- 20 (a) by inserting, immediately after the words “or contracts” in subsection (1)(b)(i) and (ii), the words “or arrangements”; and
- (b) by inserting, immediately after the words “loss suffered by the claimant,” in subsection (2), the words “after deducting any amount of compensation paid or payable to the same claimant in
- 25 respect of the same contravention under an order of court or an agreement to pay by any defendant, defendant corporation or defendant partnership under Division 5 or under an order for disgorgement under section 236L,”.

Amendment of section 236

30 **60.** Section 236(1) of the principal Act is amended by inserting, immediately after the words “other than” in paragraph (b), the words “by way of a default judgment or”.

New Division 5 of Part XII

61. The principal Act is amended by inserting, immediately after section 236, the following Division and sections:

“Division 5 — Attributed Liability

5 Interpretation of this Division

236A. In this Division, unless the context otherwise requires —

“defendant” means an individual liable to an order for a civil penalty under section 236H in respect of a contravention of any provision in this Part committed by a corporation, partnership, limited liability partnership or unincorporated association;

“defendant corporation” means a corporation —

(a) liable to be punished under section 236B(1) or to an order for a civil penalty under section 236B(3) in respect of a contravention of any provision in this Part committed by its employee or officer; or

(b) liable to an order for a civil penalty under section 236C(1);

“defendant partnership” means a partnership or limited liability partnership —

(a) liable to be punished under section 236E(1) or to an order for a civil penalty under section 236E(3) in respect of a contravention of any provision in this Part committed by a partner or employee of the partnership or a partner, manager or employee of the limited liability partnership, as the case may be; or

(b) liable to an order for a civil penalty under section 236F(1);

“partnership”, for the purposes of Subdivision (2), means the partnership at the time of the contravention by the contravening person referred to in section 236E(1) or 236F(1), as the case may be.

*Subdivision (1) — Corporations***Liability of corporation when employee or officer commits contravention with consent or connivance of corporation**

5 **236B.**—(1) Where an offence of contravening any provision in this Part is proved to have been committed by an employee or an officer of a corporation (referred to in this section as the contravening person) —

- (a) with the consent or connivance of the corporation; and
- (b) for the benefit of the corporation,

10 the corporation shall be guilty of that offence as if the corporation had committed the contravention, and shall be liable to be proceeded against and punished accordingly.

(2) No proceedings shall be instituted against a corporation under subsection (1) after —

- 15 (a) a court has made an order against the corporation for the payment of a civil penalty under subsection (3); or
- (b) the corporation has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5) (as that provision is
- 20 applied to an action under subsection (3) by subsection (6)),

in respect of the same contravention.

(3) Where it appears to the Authority that a corporation is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the

25 Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty in respect of that contravention as if the corporation had committed the contravention, whether or not such action is brought against the contravening person.

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the corporation is liable to be punished under

30 subsection (1) for a contravention of any provision in this Part, which contravention resulted in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the corporation gained; or

(ii) the amount of the loss that it avoided,

as a result of the contravention by the contravening person;

or

(b) equal to \$100,000,

whichever is the greater.

(5) If the court in subsection (3) is satisfied on a balance of probabilities that the corporation is liable to be punished under subsection (1) for a contravention of any provision in this Part, which contravention did not result in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(6) Sections 232(4) to (7) and 233 shall apply in relation to an action brought against a corporation under subsection (3) as they apply in relation to an action under section 232.

(7) Any defence that would be available to —

(a) the contravening person if he were prosecuted for his contravention; or

(b) the corporation if it were prosecuted under subsection (1) in respect of that contravention,

shall also be available to the corporation in an action under subsection (3) in respect of that contravention.

(8) The means by which consent or connivance of the corporation under subsection (1) or (3) may be established include proving that —

(a) the corporation's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention;

(b) a high managerial agent of the corporation intentionally, knowingly or recklessly engaged in the relevant conduct, or

expressly, tacitly or impliedly authorised or permitted the contravention; or

- (c) a corporate culture existed within the corporation that directed or encouraged non-compliance with the relevant provision.

(9) In this section —

“board of directors” means the body (by whatever name called) exercising the executive authority of the corporation;

“corporate culture” means an attitude, policy, rule, course of conduct or practice existing within the corporation generally or in the part of the corporation in which the relevant activity takes place;

“high managerial agent” means an employee, agent or officer of the corporation with duties of such responsibility that his conduct may fairly be assumed to represent the corporation’s policy.

Civil penalty when corporation fails to prevent or detect contravention by employee or officer

236C.—(1) A corporation which fails to prevent or detect a contravention of any provision in this Part committed by an employee or officer of the corporation (referred to in this section as the contravening person), which contravention is —

- (a) committed for the benefit of the corporation; and
(b) attributable to the negligence of the corporation,

commits a contravention and shall be liable to an order for a civil penalty under this section.

(2) Where it appears to the Authority that a corporation has committed a contravention under subsection (1), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty.

(3) If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1), which resulted in the corporation gaining a profit or avoiding a loss,

the court may make an order against the corporation for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the corporation gained; or

5

(ii) the amount of the loss that it avoided,

as a result of the contravention by the contravening person;
or

(b) equal to \$100,000,

whichever is the greater.

10

(4) If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1), which did not result in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum not less than \$50,000 and not
15 more than \$2 million.

(5) Sections 232(4) to (7) and 233 shall apply in relation to an action brought against a corporation under subsection (2) as they apply in relation to an action under section 232.

20

(6) Any defence that would be available to the contravening person if he were prosecuted for his contravention shall also be available to the corporation in an action under subsection (2) in respect of its failure to prevent or detect that contravention.

25

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a corporation, the court shall take into account the following matters:

(a) whether the corporation has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;

30

(b) whether the corporation has consistently enforced compliance with its policies and procedures referred to in paragraph (a); and

(c) such other factors as the court may consider relevant.

Civil liability of corporation for contravention by employee or officer

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

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

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

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

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

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

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

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

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

(3) Any defence that would be available to —

- (a) the contravening person if he were prosecuted for his contravention; or
- (b) the defendant corporation if it were prosecuted under section 236B(1) or had an action brought against it under section 236C(2),

shall also be available to the defendant corporation in an action under this section in respect of that contravention.

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

(5) In determining whether the dealing or trading took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters set out in section 234(5).

(6) In this section, “maximum recoverable amount” means —

- (a) the amount of profit that the defendant corporation gained; or
- (b) the amount of the loss that it avoided,

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

Subdivision (2) — Partnerships and limited liability partnerships

Liability of partnership and limited liability partnership when partner, etc., commits contravention with consent or connivance

236E.—(1) Where an offence of contravening any provision of this Part is proved to have been committed by a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (referred to in this section as the contravening person) —

- (a) with the consent or connivance of the partnership or limited liability partnership; and

(b) for the benefit of the partnership or limited liability partnership,

the partnership or limited liability partnership shall be guilty of that offence as if it had committed the contravention, and every partner of that partnership, or the limited liability partnership, as the case may be, shall be liable to be proceeded against and punished accordingly.

(2) No proceedings shall be instituted against any partner of the partnership or the limited liability partnership under subsection (1) after —

(a) a court has made an order against the partner or limited liability partnership for the payment of a civil penalty under subsection (3); or

(b) the partner or limited liability partnership has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5) (as that provision is applied to an action under subsection (3) by subsection (6)),

in respect of the same contravention.

(3) Where it appears to the Authority that a partnership or a limited liability partnership is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the partnership or limited liability partnership to seek an order for a civil penalty in respect of that contravention as if the partnership or limited liability partnership had committed the contravention, whether or not such action is brought against the contravening person.

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the partnership or limited liability partnership is liable to be punished under subsection (1) for a contravention of any provision in this Part, which contravention resulted in the partnership or limited liability partnership gaining a profit or avoiding a loss, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the partnership or limited liability partnership gained; or

(ii) the amount of the loss that it avoided,

as a result of the contravention by the contravening person;
or

(b) equal to \$100,000,

whichever is the greater.

(5) If the court in subsection (3) is satisfied on a balance of probabilities that the partnership or limited liability partnership is liable to be punished under subsection (1) for a contravention of any provision in this Part, which contravention did not result in the partnership or limited liability partnership gaining a profit or avoiding a loss, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(6) Sections 232(4) to (7) and 233 shall apply in relation to an action brought against a partnership or limited liability partnership under subsection (3) as they apply in relation to an action under section 232.

(7) Any defence that would be available to —

(a) the contravening person if he were prosecuted for his contravention; or

(b) the partnership or limited liability partnership if it were prosecuted under subsection (1) in respect of that contravention,

shall also be available to the partnership or limited liability partnership in an action under subsection (3) in respect of that contravention.

(8) The means by which consent or connivance of the partnership or limited liability partnership under subsection (1) or (3) may be established include proving that —

(a) the executive partners of the partnership or limited liability partnership intentionally, knowingly or recklessly carried

out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention;

(b) a high managerial agent of the partnership or limited liability partnership intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention; or

(c) a corporate culture existed within the partnership or limited liability partnership that directed or encouraged non-compliance with the relevant provision.

(9) In this section —

“corporate culture” means an attitude, policy, rule, course of conduct or practice existing within the partnership or limited liability partnership generally or in the part of the partnership or limited liability partnership in which the relevant activity takes place;

“executive partners” means the partners exercising the executive authority of the partnership or limited liability partnership;

“high managerial agent” means a partner, manager or employee of the partnership or limited liability partnership with duties of such responsibility that his conduct may fairly be assumed to represent the partnership or limited liability partnership’s policy.

Civil penalty when partnership or limited liability partnership fails to prevent or detect contravention by partner, etc.

236F.—(1) A partnership or limited liability partnership which fails to prevent or detect a contravention of any provision in this Part committed by a partner or employee of the partnership or a partner, manager or employee of the limited liability partnership, as the case may be (referred to in this section as the contravening person), which contravention is —

(a) committed for the benefit of the partnership or limited liability partnership; and

(b) attributable to the negligence of the partnership or limited liability partnership,

commits a contravention and shall be liable to an order for a civil penalty under this section.

5 (2) Where it appears to the Authority that a partnership or limited liability partnership has committed a contravention under subsection (1), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the partnership or limited liability partnership to seek an order for a civil penalty.

10 (3) If the court is satisfied on a balance of probabilities that the partnership or limited liability partnership has committed a contravention under subsection (1), which resulted in the partnership or limited liability partnership gaining a profit or avoiding a loss, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum —

15 (a) not exceeding 3 times —

(i) the amount of the profit that the partnership or limited liability partnership gained; or

(ii) the amount of the loss that it avoided,

20 as a result of the contravention by the contravening person; or

(b) equal to \$100,000,

whichever is the greater.

25 (4) If the court is satisfied on a balance of probabilities that the partnership or limited liability partnership has committed a contravention under subsection (1), which did not result in the partnership or limited liability partnership gaining a profit or avoiding a loss, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

30 (5) Sections 232(4) to (7) and 233 shall apply in relation to an action brought against a partnership or limited liability partnership under subsection (2) as they apply in relation to an action under section 232.

(6) Any defence that would be available to the contravening person if he were prosecuted for his contravention shall also be available to the partnership or limited liability partnership in an action under subsection (2) in respect of its failure to prevent or detect that contravention.

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a partnership or limited liability partnership, the court shall take into account the following matters:

- (a) whether the partnership or limited liability partnership has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;
- (b) whether the partnership or limited liability partnership has consistently enforced compliance with its policies and procedures referred to in paragraph (a); and
- (c) such other factors as the court may consider relevant.

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

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

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

contemporaneously with the contravention by the contravening person; and

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

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

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

(b) under an order for disgorgement under section 236L, to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

(3) Any defence that would be available to —

- (a) the contravening person if he were prosecuted for his contravention; or

- (b) the defendant partnership if it were prosecuted under section 236E(1) or had an action brought against it under section 236F(2),

shall also be available to the defendant partnership in an action under this section in respect of that contravention.

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

(5) In determining whether the dealing or trading took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters set out in section 234(5).

(6) In this section, “maximum recoverable amount” means —

(a) the amount of profit that the defendant partnership gained;
or

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

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

Subdivision (3) — Officers, partners, etc., of entities

10 **Civil penalty against officer of corporation, etc.**

236H.—(1) Where it appears to the Authority that a corporation, partnership, limited liability partnership or unincorporated association (referred to in this section as the contravening person) has contravened any provision in this Part —

15 (a) with the consent or connivance of a person (referred to in this section as the defendant) who is an officer or (where its affairs are managed by its members) a member of the corporation, a partner of the partnership, a partner or manager of the limited liability partnership, or an officer of
20 the unincorporated association (other than a partnership) or a member of its governing body, as the case may be; or

(b) as a result of any neglect on the part of the defendant,

the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the defendant to seek an order for a civil
25 penalty in respect of that contravention as if the defendant had committed the contravention, whether or not such action is brought against the contravening person.

(2) If the court is satisfied on a balance of probabilities that the contravening person has contravened a provision in this Part with the
30 consent or connivance of the defendant, or as a result of any neglect on the part of the defendant, which contravention resulted in the defendant gaining a profit or avoiding a loss, the court may make an order against the defendant for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the defendant gained; or

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

as a result of the contravention by the contravening person;

or

(b) equal to \$50,000,

whichever is the greater.

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

(4) Sections 232(4) to (7) and 233 shall apply in relation to an action brought against a defendant under subsection (1) as they apply in relation to an action under section 232.

(5) Any defence that would be available to —

(a) the contravening person if it were prosecuted for its contravention; or

(b) the defendant if he were prosecuted under section 331 in respect of that contravention,

shall also be available to the defendant in an action under subsection (1) in respect of that contravention.

Civil liability of officer of corporation, etc.

236I.—(1) A defendant who has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by a contravening person referred to in section 236H(1) shall, whether or not the defendant had been convicted under section 331 or had a civil penalty imposed on him under section 236H, be liable to pay compensation to any person (referred to in this section as the claimant) who —

(a) contemporaneously with the contravention by the contravening person, had subscribed for, purchased or sold

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

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

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

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

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

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

(b) under an order for disgorgement under section 236L,
to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

(3) Any defence that would be available to —

25 (a) the contravening person if it were prosecuted for its contravention; or

(b) the defendant if he were prosecuted under section 331 in respect of that contravention,

shall also be available to the defendant in an action under this section
30 in respect of that contravention.

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

(5) In determining whether a dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters referred to in section 234(5)(a) to (e).

(6) In this section, “maximum recoverable amount” means —

- (a) the amount of the profit that the defendant gained; or
- (b) the amount of the loss that he avoided,

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

Subdivision (4) — General

Actions not to commence or stayed in certain situations

236J.—(1) Except with the leave of court, no action may be brought against —

- (a) a defendant corporation under section 236B, 236C or 236D;
- (b) a defendant partnership (including, in the case of a partnership, any of the partners) under section 236E, 236F or 236G; or
- (c) a defendant under section 236H or 236I,

which relates to a contravention of a provision in this Part (referred to in this section as the primary contravention) by a contravening person referred to in section 236B(1) or 236C(1) (in relation to the defendant corporation), 236E(1) or 236F(1) (in relation to the defendant partnership) or 236H(1) (in relation to the defendant), as the case may be, after the commencement of —

- (i) criminal proceedings in respect of the primary contravention against the contravening person; or
- (ii) an action under section 232 in respect of the primary contravention against the contravening person,

and any such action in paragraph (a), (b) or (c) pending on the date of commencement of the proceedings or action in paragraph (i) or (ii)

shall be stayed, and may not thereafter be continued except with the leave of court.

(2) Leave under subsection (1) may not be granted if —

(a) in the criminal proceedings referred to in subsection (1)(i), the contravening person has been acquitted of the primary contravention; or

(b) in the action under section 232 referred to in subsection (1)(ii), the court is not satisfied that the contravening person has committed the primary contravention.

(3) Except with the leave of court, no action under section 236D, 236G or 236I may be brought against the defendant corporation, defendant partnership or defendant in respect of a primary contravention after the commencement of —

(a) criminal proceedings against the defendant corporation under section 236B(1), the defendant partnership (including, in the case of a partnership, any of the partners) under section 236E(1) or the defendant under section 331 in respect of the same contravention;

(b) an action against the defendant corporation under section 236B(3), the defendant partnership under section 236E(3) or the defendant under section 236H in respect of the same contravention; or

(c) an action against the defendant corporation under section 236C(2) or the defendant partnership under section 236F(2) in respect of the failure to prevent or detect that contravention,

and any such action under section 236D, 236G or 236I, as the case may be, pending on the date of commencement of the proceedings or action in paragraph (a), (b) or (c) shall be stayed, and may not thereafter be continued except with the leave of court.

(4) Leave under subsection (3) may not be granted if a date has been fixed by a court under section 236K for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed, as the case may be, shall comply with such directions relating to the filing and proof of his claim under section 236K as that court may issue in his case.

Civil liability in event of conviction or civil penalty

236K.—(1) Notwithstanding section 236D, 236G or 236I, where a defendant corporation, defendant partnership (including, in the case of a partnership, any of the partners) or defendant —

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

10 and has gained a profit or avoided a loss as a result of the contravention by the contravening person referred to in section 236B(1), 236C(1), 236E(1), 236F(1) or 236H(1), as the case may be, the court which convicted or made the order for a civil penalty against the defendant corporation, defendant partnership (or any of

15 the partners thereof) or defendant may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims against the defendant corporation, defendant partnership or defendant, as the case may be, for compensation in respect of that contravention.

20 (2) Section 236(2) to (5) shall apply, with the necessary modifications, to an action under subsection (1), and in such application —

- 25 (a) any reference to the contravening person shall be read as the defendant corporation, the defendant partnership or the defendant in subsection (1); and
- (b) the reference to an action under section 234 shall be read as an action under section 236D (in relation to the defendant corporation), 236G (in relation to the defendant partnership) or 236I (in relation to the defendant), as the case may be.

30 (3) In this section, “claimant” means any person who would qualify as a claimant to bring an action against the defendant corporation, defendant partnership or defendant under section 236D, 236G or 236I, as the case may be.

Order for disgorgement against third party

236L.—(1) Without prejudice to any action under section 234, 236, 236D, 236G, 236I or 236K, where —

- (a) a person has been convicted by a court of an offence in respect of a contravention of any provision in this Part;
- (b) a person has had an order for the payment of a civil penalty made against him under section 232 or any of the provisions in this Division by a court, other than by way of a default judgment or a consent order made with or without admission of contravention, in respect of a contravention of any provision in this Part; or
- (c) in an action commenced under this section, a court is satisfied on a balance of probabilities that a contravention by a person of any provision in this Part has occurred,

the court may, on the application of the Authority or any claimant, make an order against any other person (referred to in this section as a third party) who has received the whole or any part of the benefit of that contravention for disgorgement of that benefit, being benefit derived from trades carried out for the third party by the person referred to in paragraph (a), (b) or (c).

(2) The court shall issue a notice to a third party against whom an application for an order for disgorgement under subsection (1) is made, giving the third party an opportunity to show cause, within such time as may be specified in the notice, why the order should not be made.

(3) An application for an order for disgorgement under subsection (1) shall not be commenced after the expiration of 6 years from the date on which the contravention referred to in that subsection was committed.

(4) The court shall not make an order for disgorgement against a third party, or shall not order disgorgement of the entire benefit derived by the third party, if the court is satisfied, on a balance of probabilities, that —

- (a) the third party acquired the benefit without knowing, and in circumstances such as not to arouse a reasonable suspicion,

that the benefit was derived from the contravention referred to in subsection (1); and

- (b) the third party has so altered his position in reliance on his having an indefeasible interest in the benefit that, in the opinion of the court, it would be inequitable to make the order for disgorgement or to order disgorgement of the entire benefit derived by him, as the case may be.

(5) Notwithstanding subsection (4), the court may make an order for disgorgement against a third party referred to in subsection (4) of a sum that is, in the opinion of the court, equitable.

(6) The court may, after the order for disgorgement has been made final, fix a date, not earlier than 6 months from the date the order for disgorgement has been made final, on or before which all claimants have to file and prove their claims for compensation in respect of the contravention referred to in subsection (1).

(7) The court may, after the expiry of the date fixed under subsection (6), order that each claimant who has filed and proven his claim for compensation be paid out of the sum under the final order for disgorgement, an amount —

- (a) equal to the amount of loss suffered by the claimant, after deducting any other compensation paid or payable to the same claimant under an order of court or an agreement to pay in respect of the same contravention; or
- (b) equal to the pro-rated portion of the sum under the final order for disgorgement, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,

whichever is the lesser.

(8) Any sum remaining under the order for disgorgement shall be paid into the Consolidated Fund.

(9) If the third party fails to pay the sums under the order for disgorgement within the time specified in the court order under subsection (7) —

- (a) each claimant may recover the sum due to him under the order for disgorgement as though it were a judgment debt due to him; and

- (b) the remaining sum under the order for disgorgement may be recovered by the Authority as though it were a judgment debt due to the Authority and paid into the Consolidated Fund.

5 (10) After the expiry of the date fixed under subsection (6), no person shall make any subsequent application under this section for an order for disgorgement against the third party in respect of the same contravention.

10 (11) For the purposes of this section, an order for disgorgement is made final if —

- (a) the order is not set aside on appeal or revision or is varied only as to the sum to be disgorged;
- (b) the order is not subject to further appeal;
- (c) no notice of appeal against the order is lodged within the
15 time prescribed by Rules of Court (Cap. 322, R 5); or
- (d) any appeal against the order is withdrawn.

(12) In this section —

20 “benefit”, in relation to a contravention of any provision in this Part, means a profit gained or loss avoided as a result of that contravention;

“claimant”, in relation to a contravention of any provision in this Part, means any person who would qualify as a claimant under section 234 in respect of that contravention.”.

New Division heading

25 **62.** The principal Act is amended by inserting, immediately before section 237, the following Division heading:

“Division 6 — Miscellaneous”.

Amendment of section 237

30 **63.** Section 237 of the principal Act is amended by deleting the words “section 232, 234 or 236” and substituting the words “Division 4 or 5 or any application under section 236L”.

Amendment of section 238

64. Section 238 of the principal Act is amended —

- (a) by deleting the words “sections 232, 234 and 236” in subsection (1)(a) and substituting the words “Divisions 4 and 5 and any application under section 236L”;
5
- (b) by deleting the words “section 236” in subsection (2) and substituting the words “sections 236, 236K and 236L”;
- (c) by deleting the words “that section” in subsection (2)(a) and substituting the words “those sections”; and
- 10 (d) by inserting, immediately after the words “section 235(2)” in subsection (2)(c), the words “or 236J”.

Amendment of section 239

65. Section 239(1) of the principal Act is amended —

- (a) by deleting the definition of “chief executive officer”;
- 15 (b) by inserting, immediately after the definition of “issuer”, the following definition:
 - “ “limited liability partnership” means any limited liability partnership whether registered in Singapore under the Limited Liability Partnerships Act (Cap. 163A) or otherwise;”;
 - 20 and
- (c) by deleting the definition of “securities” and substituting the following definition:
 - “ “securities” means —
 - (a) shares or units of shares of a corporation;
 - 25 (b) debentures or units of debentures of an entity;
 - (c) interests in a limited partnership or limited liability partnership formed in Singapore or elsewhere; or
 - (d) such other product or class of products as the Authority may prescribe,
 - 30 but does not include such other product or class of products as the Authority may prescribe as not being securities;”.

New section 239B

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

“Modification of provisions to certain offers

5 **239B.** The Authority may, if it thinks it necessary in the interest of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of securities as may be prescribed, and the provisions of this Division shall apply to such offer subject to such
10 modifications or adaptations.”.

Amendment of section 240

67. Section 240 of the principal Act is amended —

- (a) by deleting the words “between the 14th and 21st days (both days inclusive)” in subsection (8) and substituting the words “within
15 the period prescribed by the Authority”;
- (b) by deleting the words “the 14th day from the date of lodgment of the prospectus or profile statement with the Authority” in subsection (8A) and substituting the words “such day from the date of lodgment of the prospectus or profile statement with the
20 Authority as the Authority may prescribe”; and
- (c) by inserting, immediately after subsection (8A), the following subsection:

“**(8B)** For the purposes of subsections (8) and (8A), the Authority may prescribe the same period and day for all offers
25 or different periods and days for different offers.”.

Amendment of section 251

68. Section 251(9) of the principal Act is amended —

- (a) by deleting the word “recognised” in paragraph (a) and substituting the word “overseas”; and
- 30 (b) by deleting paragraph (g) and substituting the following paragraph:

“(g) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such

other conditions as the Authority may prescribe are satisfied; or”.

Amendment of section 268

5 **69.** Section 268 of the principal Act is amended by deleting subsection (10) and substituting the following subsection:

“(10) Notwithstanding anything in subsection (8) —

- 10 (a) a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(a) need not be audited; and
- 15 (b) a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(b) need not be audited, or the audit thereof may be of a limited nature or extent, if the trustee for the holders of the debentures of the borrowing entity has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.”.

Amendment of section 272A

20 **70.** Section 272A of the principal Act is amended —

- (a) by deleting the word “and” at the end of subsection (1)(c);
- (b) by deleting the full-stop at the end of paragraph (d) of subsection (1) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:
 - 25 “(e) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —
 - (i) the prospectus has expired pursuant to section 250; or
 - 30 (ii) the person making the offer has before making the offer informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection.”; and

- (c) by deleting the word “recognised” in subsection (10)(ii) and substituting the word “overseas”.

Amendment of section 272B

71. Section 272B(1) of the principal Act is amended —

- 5 (a) by deleting the word “and” at the end of paragraph (b); and
- (b) by deleting the full-stop at the end of paragraph (c) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:
- 10 “(d) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —
- (i) the prospectus has expired pursuant to section 250; or
- (ii) the person making the offer has before making
- 15 the offer —
- (A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and
- 20 (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.”.

Amendment of section 273

25 **72.** Section 273(1) of the principal Act is amended —

- (a) by deleting paragraph (d) and substituting the following paragraph:
- 30 “(d) it is an offer of shares or debentures (not being such excluded shares or excluded debentures as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange;”;

(b) by inserting, immediately after the word “debentures” in the 1st line of paragraph (e), the words “(not being such excluded units of shares or debentures as may be prescribed by the Authority)”; and

5 (c) by deleting sub-paragraph (i) of paragraph (e) and substituting the following sub-paragraph:

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

10 **Amendment of section 275**

73. Section 275 of the principal Act is amended —

(a) by deleting the word “and” at the end of subsection (1)(a);

(b) by deleting the full-stop at the end of paragraph (b) of subsection (1) and substituting the word “; and”, and by inserting
15 immediately thereafter the following paragraph:

“(c) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to
20 section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and
25

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.”;
30

(c) by deleting “\$200,000” in subsection (1A)(a) and substituting “\$100,000”;

(d) by deleting the word “and” at the end of subsection (1A)(b);

- (e) by deleting the full-stop at the end of paragraph (c) of subsection (1A) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(d) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.”; and

- (f) by deleting the word “recognised” in paragraph (ii) of the definition of “advertisement” in subsection (2) and substituting the word “overseas”.

Amendment of section 276

74. Section 276 of the principal Act is amended —

- (a) by inserting, immediately after the words “and 279” in subsection (1), the words “but subject to subsection (7)”;

- (b) by inserting, immediately after subsection (1), the following subsection:

“(1A) The reference to the sale of securities under subsection (1) shall, in a case where the securities initially acquired are debentures, or units of shares or debentures, with an attached right of conversion into shares or debentures, include a reference to the sale of the converted shares or debentures.”;

- (c) by deleting the word “Securities” in the 1st line of subsection (3) and substituting the words “Subject to subsection (7), securities”;
- (d) by deleting the word “Where” in the 1st line of subsection (4) and substituting the words “Subject to subsection (7), where”; and
- (e) by inserting, immediately after subsection (6), the following subsection:

“(7) Subsections (1), (3) and (4) shall not apply where the securities of the corporation acquired are of the same class as other securities of the corporation —

- (a) an offer of which has previously been made in or accompanied by a prospectus; and
- (b) which are listed for quotation on a securities exchange.”.

Amendment of section 277

75. Section 277 of the principal Act is amended —

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

“(c) either —

- (i) the offer is made in or accompanied by the offer information statement referred to in paragraph (b); or
- (ii) all the conditions in subsection (1B) are satisfied.”; and

- (b) by deleting subsection (1A) and substituting the following subsections:

“(1A) Subsection (1) shall only apply to an offer of securities referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

(1B) The conditions referred to in subsection (1)(c)(ii) are —

(a) the offer is made using any automated teller machine or such other electronic means as may be prescribed by the Authority;

(b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

(ii) that he should read the offer information statement before submitting his application, before enabling him to submit any application to subscribe for or purchase securities; and

(c) the person making the offer complies with such other requirements as the Authority may prescribe.”.

Amendment of section 282A

76. Section 282A(1) of the principal Act is amended by deleting the definitions of “chief executive officer” and “trustee-manager”.

New section 282BA

77. The principal Act is amended by inserting, immediately after section 282B, the following section:

“Modification of provisions to certain offers

282BA. The Authority may, if it thinks it necessary in the interest of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of units or derivatives of units in a business trust as may be prescribed, and the provisions of this Division shall apply to such offer subject to such modifications or adaptations.”.

Amendment of section 282C

78. Section 282C of the principal Act is amended —

- 5 (a) by inserting, immediately after the words “registered business trust” in subsection (1)(a), the words “or recognised business trust”;
- (b) by deleting the words “between the 14th and 21st days (both days inclusive)” in the 2nd line of subsection (10) and substituting the words “within the period prescribed by the Authority”;
- 10 (c) by deleting the words “the 14th day from the date of lodgment of the prospectus or profile statement with the Authority” in subsection (11) and substituting the words “such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe”; and
- 15 (d) by inserting, immediately after subsection (11), the following subsection:

“(11A) For the purposes of subsections (10) and (11), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.”.

Amendment of section 282L

20 **79.** Section 282L(9) of the principal Act is amended —

- (a) by deleting the word “recognised” in paragraph (a) and substituting the word “overseas”; and
- (b) by deleting paragraph (g) and substituting the following paragraph:

25 “(g) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or”.

New Subdivision (2A) of Division 1A of Part XIII

30 **80.** The principal Act is amended by inserting, immediately after section 282T, the following Subdivision and sections:

“Subdivision (2A) — Recognised business trusts

Power of Authority to recognise business trusts constituted outside Singapore

5 **282TA.**—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2), recognise a business trust constituted outside Singapore.

(2) The Authority may recognise a business trust under subsection (1) if and only if the Authority is satisfied that —

10 (a) the laws and practices of the jurisdiction under which the business trust is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them under the Business Trusts Act (Cap. 31A) in the case of registered business trusts;

15 (b) the business trust satisfies such criteria as may be prescribed by the Authority; and

(c) the person making the offer of, or the issuer of, units or derivatives of units in the business trust, or the trustee-manager of the business trust satisfies such criteria as may be prescribed by the Authority.

20 (3) Without prejudice to subsection (2), in considering whether to recognise a business trust under subsection (1), the Authority may have regard to such other factors as may be prescribed.

25 (4) Without prejudice to subsection (2), the Authority may refuse to recognise any business trust where it appears to the Authority that it is not in the public interest to do so.

30 (5) The Authority shall not refuse to recognise a business trust under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the business trust on the basis of any of the following circumstances:

35 (a) the person making the offer (being an entity), the issuer or the trustee-manager or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

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

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

(6) Any person making an application under subsection (1) may, within 30 days after he is notified that the Authority has refused to recognise that business trust constituted outside Singapore under subsection (1), appeal to the Minister whose decision shall be final.

(7) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any business trust that is recognised under subsection (1).

(9) While a business trust remains a recognised business trust, a person making an offer of, or an issuer of, units or derivatives of units in the trust, or the trustee-manager of the trust shall ensure that the criteria prescribed by the Authority in accordance with subsection (2)(b) and (c) which are applicable to him continue to be satisfied.

(10) The trustee-manager of a recognised business trust shall furnish such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.

(11) Any person who contravenes subsection (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to impose conditions or restrictions

282TB.—(1) The Authority may recognise a business trust under section 282TA(1) subject to such conditions or restrictions as it thinks fit to impose for the purpose of protection of investors, and the trustee-manager of the trust and a person making an offer of, or an

issuer of, units or derivatives of units in the trust shall comply with the conditions or restrictions applicable to him.

(2) The Authority may, at any time, by notice in writing to any of the persons referred to in subsection (1), vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

(3) Any person who contravenes any condition or restriction applicable to him under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Revocation, suspension or withdrawal of recognition

282TC.—(1) The Authority may revoke the recognition of a recognised business trust granted under section 282TA(1) if —

- (a) the application for recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the recognition;
- (b) the Authority is of the opinion that the continued recognition of the business trust is or will be against the public interest;
- (c) the Authority is of the opinion that the continued recognition of the business trust is or will be prejudicial to its unitholders or potential unitholders; or
- (d) there has been a contravention of section 282TA(9) or (10) or a condition or restriction referred to in section 282TB.

(2) Where the Authority revokes the recognition of a recognised business trust under subsection (1), the Authority may issue such directions as it deems fit to a person making an offer of, or the issuer of, units or derivatives of units in the trust, or the trustee-manager of the trust, including a direction that he provides the holders of the units or derivatives of units with an option to redeem or sell back to him their units or derivatives of units, as the case may be, on such

terms as the Authority may approve; and the person to whom the directions are issued shall comply with them.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider —

- 5 (a) whether the trustee-manager is able to liquidate the property of the trust without material adverse financial effect to the unitholders, and for this purpose, the factors which the Authority may take into account include —
 - (i) the liquidity of the property of the trust;
 - 10 (ii) the penalties, if any, payable for liquidating the property; and
 - (iii) in a case where the units of the trust are also listed for quotation or quoted on an overseas securities exchange, the potential impact which the liquidation may have on unitholders in the country or territory where they are listed; and
 - 15 (b) where the units or derivatives of units of the trust are listed for quotation on the official list of a securities exchange, whether the holders of the units or derivatives of units are afforded an opportunity to liquidate, sell or redeem their units or derivatives of units on reasonable terms in accordance with the requirements of the listing rules of the securities exchange.
 - 20 (4) A person who without reasonable excuse contravenes any of the directions issued by the Authority to him under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.
 - 25 (5) Notwithstanding subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the recognition of a recognised business trust, suspend the recognition of that recognised business trust for a specific period, and may at any time remove such suspension.
 - 30 (6) Where the Authority revokes the recognition of a recognised business trust under subsection (1) or suspends the recognition of a
 - 35

recognised business trust under subsection (5), it shall notify the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 282TA(1).

5 (7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the trustee-manager of the business trust or the person who made the application to the Authority for recognition of a business trust under section 282TA(1), in such form and manner as may be prescribed, withdraw the
10 recognition of that recognised business trust.

(8) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (7) where the Authority is of the opinion that —

(a) there is any matter concerning the recognised business trust
15 which should be investigated before the recognition is withdrawn; or

(b) the withdrawal of the recognition would not be in the public interest.

(9) The Authority shall not —

20 (a) revoke the recognition of a recognised business trust under subsection (1);

(b) impose a direction under subsection (2);

(c) suspend the recognition of a recognised business trust under subsection (5); or

25 (d) refuse the withdrawal of the recognition of a recognised business trust under subsection (8),

without giving the person referred to in subsection (2), (6) or (7), as the case may be, an opportunity to be heard, except that an opportunity to be heard need not be given for a revocation or
30 suspension on the ground that the continued recognition of the recognised business trust is against the public interest on the basis of any of the following circumstances:

(i) the person making the offer (being an entity), the issuer, the trustee-manager of the recognised business trust or the
35 recognised business trust itself is in the course of being

wound up or otherwise dissolved, whether in Singapore or elsewhere;

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

5 (iii) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager, or in relation to the trust property of the
10 recognised business trust.

(10) The person referred to in subsection (2), (6) or (7), as the case may be, may, within 30 days after he is notified that the Authority —

(a) has revoked the recognition of that recognised business trust under subsection (1);

15 (b) has imposed a direction on him under subsection (2);

(c) has suspended the recognition of that recognised business trust under subsection (5); or

(d) has refused to withdraw the recognition of that recognised business trust under subsection (8),

20 appeal to the Minister whose decision shall be final.

(11) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (5) or withdraws a recognition under subsection (8), it may —

25 (a) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and

(b) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.”.

Amendment of section 282V

30 **81.** Section 282V of the principal Act is amended —

(a) by deleting the word “and” at the end of subsection (1)(c);

- (b) by deleting the full-stop at the end of paragraph (d) of subsection (1) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(e) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 282K; or

(ii) the person making the offer has before making the offer informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection.”; and

- (c) by deleting the word “recognised” in subsection (10)(ii) and substituting the word “overseas”.

Amendment of section 282W

82. Section 282W(1) of the principal Act is amended —

(a) by deleting the word “and” at the end of paragraph (b); and

(b) by deleting the full-stop at the end of paragraph (c) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(d) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 282K; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is

made that the offer is made in reliance on the exemption under this subsection.”.

Amendment of section 282X

83. Section 282X(1) of the principal Act is amended —

- 5 (a) by deleting paragraph (d) and substituting the following paragraph:

10 “(d) it is an offer of units in a business trust (not being such excluded units in a business trust, or units in such excluded business trust, as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange;”;

- 15 (b) by inserting, immediately after the words “business trust” in the 1st line of paragraph (e), the words “(not being such excluded derivatives of units in a business trust, or derivatives of units in such excluded business trust, as may be prescribed by the Authority)”;

- (c) by deleting sub-paragraph (i) of paragraph (e) and substituting the following sub-paragraph:

20 “(i) the derivatives of units have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange; or”.

Amendment of section 282Z

84. Section 282Z of the principal Act is amended —

- 25 (a) by deleting the word “and” at the end of subsection (1)(a);

- (b) by deleting the full-stop at the end of paragraph (b) of subsection (1) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

30 “(c) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

- (i) the prospectus has expired pursuant to section 282K; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.”;

(c) by deleting “\$200,000” in subsection (2)(a) and substituting “\$100,000”;

(d) by deleting the word “and” at the end of subsection (2)(b);

(e) by deleting the full-stop at the end of paragraph (c) of subsection (2) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(d) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 282K; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.”; and

(f) by deleting the word “recognised” in paragraph (ii) of the definition of “advertisement” in subsection (3) and substituting the word “overseas”.

Amendment of section 282ZA

85. Section 282ZA of the principal Act is amended —

- (a) by inserting, immediately after the words “and 282ZB” in subsection (1), the words “but subject to subsection (7)”;
- 5 (b) by inserting, immediately after subsection (1), the following subsection:

“(1A) The reference to the sale of derivatives of units in a business trust under subsection (1) shall, in a case where the derivatives of units initially acquired are derivatives of units with an attached right of conversion into units in the business trust, include a reference to the sale of the converted units.”;
- 10 (c) by deleting the word “Securities” in the 1st line of subsection (3) and substituting the words “Subject to subsection (7), securities”;
- (d) by deleting the word “Where” in the 1st line of subsection (4) and substituting the words “Subject to subsection (7), where”;
- 15 and
- (e) by inserting, immediately after subsection (6), the following subsection:

“(7) Subsections (1), (3) and (4) shall not apply where the units or derivatives of units in the business trust acquired are of the same class as other units or derivatives of units in the business trust —

 - 20 (a) an offer of which has previously been made in or accompanied by a prospectus; and
 - (b) which are listed for quotation on a securities exchange.”.
- 25

New section 282ZAA

86. The principal Act is amended by inserting, immediately after section 282ZA, the following section:

“Offer of units converted from debentures

282ZAA.—(1) Notwithstanding sections 282V, 282W, 282X(1)(d) and (e) and (3)(c) and 282ZB, where —

(a) debentures with an attached right of conversion into units in a business trust are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275; and

(b) the debentures are then converted into the units,

5 then Subdivision (2) shall apply to an offer resulting in a sale of any of the units if the sale takes place within 6 months from the date of acquisition of the debentures.

(2) Subsection (1) shall not apply to a sale of the units to —

(a) an institutional investor;

10 (b) a relevant person as defined in section 282Z(3); or

(c) any person pursuant to an offer referred to in section 282Z(2).

(3) Subsection (1) shall not apply where the units in the business trust sold are of the same class as other units in the business trust —

15 (a) an offer of which has previously been made in or accompanied by a prospectus; and

(b) which are listed for quotation on a securities exchange.”.

Amendment of section 282ZB

87. Section 282ZB of the principal Act is amended —

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

“(c) either —

(i) the offer is made in or accompanied by the offer information statement referred to in paragraph
25 (b); or

(ii) all the conditions in subsection (2A) are satisfied.”; and

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

30 “(2) Subsection (1) shall only apply to an offer of units or derivatives of units in a business trust referred to in that subsection made within a period of 6 months from the date the

offer information statement relating to that offer is lodged with the Authority.

(2A) The conditions referred to in subsection (1)(c)(ii) are —

- 5 (a) the offer is made using any automated teller machine or such other electronic means as may be prescribed by the Authority;
- (b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —
 - 10 (i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and
 - (ii) that he should read the offer information statement before submitting his application,
 - 15 before enabling him to submit any application to subscribe for or purchase securities; and
 - (c) the person making the offer complies with such other requirements as the Authority may prescribe.”.

Amendment of section 283

- 20 **88.** Section 283(1) of the principal Act is amended by deleting the definition of “chief executive officer”.

Amendment of section 283A

89. Section 283A of the principal Act is amended —

- (a) by deleting the word “or” at the end of subsection (1)(b);
- 25 (b) by deleting paragraph (c) of subsection (1) and substituting the following paragraphs:
 - “(c) the person is the offeror or intended offeror and he makes the offer only to —
 - (i) an institutional investor;
 - 30 (ii) a relevant person as defined in section 305(5); or
 - (iii) a person who, if he acquires any right or interest in the arrangement, does so as principal and on

terms that the right or interest is acquired at a consideration of not less than \$100,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets,

and the offeror or intended offeror —

(A) informs every person to whom it makes the offer or intended offer that the offer or intended offer does not relate to a collective investment scheme which is authorised under section 286 or recognised under section 287; and

(B) if the offer or intended offer is made to a person referred to in sub-paragraph (ii) or (iii), satisfies the conditions under subsection (1A); or

(d) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a class of persons declared by the Authority by order published in the *Gazette* as persons who may use such term or derivative.”; and

(c) by inserting, immediately after subsection (1), the following subsection:

“(1A) The conditions referred to in subsection (1)(c)(B) are —

(a) the offer or intended offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(b) no selling or promotional expenses are paid or incurred in connection with the offer or intended offer, other than expenses incurred —

(i) for administrative or professional services in respect of the offer or intended offer; or

(ii) by way of commission or fee for services rendered in respect of the offer or intended offer by —

- (A) the holder of a capital markets services licence to deal in securities;
- (B) an exempt person in respect of dealing in securities;
- 5 (C) a person licensed under the Financial Advisers Act (Cap. 110) in respect of marketing of collective investment schemes;
- 10 (D) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act; or
- 15 (E) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or marketing in collective investment schemes, or who is exempted therefrom in respect of such dealing or marketing.”.

20 **Amendment of section 284A**

90. Section 284A of the principal Act is amended by inserting, immediately after the words “this Division” in the last line, the words “(other than section 283A)”.

Amendment of section 284B

25 **91.** Section 284B of the principal Act is amended by inserting, immediately after the words “This Division”, the words “(other than section 283A)”.

New section 284C

30 **92.** The principal Act is amended by inserting, immediately after section 284B, the following section:

“Modification of provisions to certain offers

284C. The Authority may, if it thinks it necessary in the interest of the public or a section of the public or for the protection of investors,

by regulations modify or adapt the provisions of this Division in their application to such offer of units in a collective investment scheme as may be prescribed, and the provisions of this Division shall apply to such offer subject to such modifications or adaptations.”.

5 **Amendment of section 285**

93. Section 285 of the principal Act is amended by deleting the section heading and substituting the following section heading:

“Requirement for authorisation or recognition”.

Amendment of section 286

10 **94.** Section 286 of the principal Act is amended —

- (a) by deleting the word “only” in subsection (3)(a)(i)(B) and substituting the word “primarily”; and
- (b) by deleting the word “The” in subsection (5) and substituting the words “Without prejudice to subsection (2), the”.

15 **Amendment of section 287**

95. Section 287(4) of the principal Act is amended by deleting the word “The” and substituting the words “Without prejudice to subsection (2), the”.

New sections 295A, 295B and 295C

20 **96.** The principal Act is amended by inserting, immediately after section 295, the following sections:

“Power to acquire units of participants of real estate investment trust in certain circumstances

25 **295A.**—(1) Where an arrangement or a contract involving the transfer of all of the units, or all of the units in any particular class, in a real estate investment trust (referred to in this section as the subject trust), to —

- (a) the trustee of another trust (including the trustee-manager of a business trust and the trustee of another real estate investment trust); or
 - (b) a corporation,
- 30

(referred to in this section as the transferee) has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the units or as to each class of units whose transfer is involved by participants of the subject trust holding no less than 90% of the total number of those units or of the units of that class (other than units already held at the date of the offer by the transferee), the transferee may, at any time within 2 months after the offer has been so approved, give notice in the prescribed manner to any dissenting participant of the subject trust that it desires to acquire his units.

(2) When a notice referred to in subsection (1) is given, the transferee shall, unless on an application made by a dissenting participant within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting participant under subsection (3) (whichever is the later) a court thinks fit to order otherwise, be entitled and bound to acquire those units —

(a) on the terms which under the arrangement or contract the units of the approving participants are to be transferred to the transferee; or

(b) if the offer contained 2 or more alternative sets of terms, on the terms which were specified in the offer as being applicable to dissenting participants.

(3) Where a transferee has given notice to any dissenting participant of the subject trust that it desires to acquire his units, the dissenting participant shall be entitled to require the transferee by a demand in writing served on the transferee, within one month from the date on which the notice was given, to supply him with a statement in writing of the names and addresses of all other dissenting participants as shown in the register of participants of the subject trust; and the transferee shall not be entitled or bound to acquire the units of the dissenting participants until 14 days after the posting of the statement of such names and addresses to the dissenting participant.

(4) Where, pursuant to any such arrangement or contract, units in the subject trust are transferred to the transferee or its nominee and those units together with any other units in the subject trust held by the transferee at the date of the transfer comprise or include 90% of the total number of the units in the subject trust or of any class of those units, then —

(a) the transferee shall within one month from the date of the transfer (unless on a previous transfer pursuant to the arrangement or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the participants of the subject trust holding the remaining units in, or the remaining units of that class of units in, the subject trust who have not assented to the arrangement or contract; and

(b) any such participant may within 3 months from receiving the notice require the transferee to acquire his units.

(5) Where a participant has given notice under subsection (4)(b) with respect to any units, the transferee shall be entitled and bound to acquire those units —

(a) on the terms on which under the arrangement or contract the units of the approving participants were transferred to it; or

(b) on such other terms as are agreed or as the court on the application of either the transferee or the participant thinks fit to order.

(6) Where a notice has been given by the transferee under subsection (1) and a court has not, on an application made by the dissenting participant, ordered to the contrary, the transferee shall —

(a) after the expiration of one month after the date on which the notice has been given;

(b) after 14 days after a statement has been supplied to a dissenting participant under subsection (3); or

(c) if an application to the court by the dissenting participant is then pending, after that application has been disposed of,

transmit a copy of the notice to the trustee of the subject trust together with an instrument of transfer executed on behalf of the participant by any person appointed by the transferee and on its own behalf by the transferee, and pay, allot or transfer to the trustee of the subject trust the amount or other consideration representing the price payable by the transferee for the units which by virtue of this section the transferee is entitled to acquire, and the trustee of the subject trust shall thereupon register the transferee as the holder of those units.

(7) Any sums received by the trustee of the subject trust under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that trustee in trust for the several persons who had held the units in respect of which they were respectively received.

(8) Where any consideration other than cash is held in trust by the trustee of the subject trust for any person under this section, the trustee may, after the expiration of 2 years from, and shall, before the expiration of 10 years from, the date on which such consideration was allotted or transferred to him, transfer such consideration to the Official Receiver.

(9) The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal in accordance with section 295B.

(10) In determining the units in the subject trust already held by the transferee at the date of the offer under subsection (1) or the percentage of the total number of units in the subject trust or of any class of those units held by the transferee under subsection (4), units held or acquired —

- (a) by a nominee on behalf of the transferee;
- (b) where the transferee is a corporation, by its related corporation or by a nominee of the related corporation;
- (c) where the transferee is the trustee-manager of a business trust or the trustee of a real estate investment trust —
 - (i) by a person who controls more than 50% of the voting power in the business trust or real estate investment trust, or by a nominee of that person;
 - (ii) by the trustee-manager of the business trust on its own account, or by the manager for the real estate investment trust, or by a nominee of the trustee-manager or manager; or
 - (iii) by a related corporation of the trustee-manager for the business trust or the manager for the real estate investment trust or by a nominee of that related corporation; or

- (d) where the transferee is the trustee of a trust that is not a business trust or real estate investment trust, by a related corporation of the trustee (being a corporation) or by a nominee of that related corporation,

shall be treated as held or acquired by the transferee.

(11) For the avoidance of doubt, in this section —

- (a) a reference to a transferee (being the trustee of a trust) holding, acquiring or contracting to acquire units in another trust is a reference to his doing any of these as trustee of the first-mentioned trust; and
- (b) a reference to a transfer of units of a trust to a transferee (being the trustee of another trust) is a reference to such transfer of units to him as trustee of that other trust.

(12) The reference in subsection (1) to units already held by the transferee —

- (a) includes a reference to units which the transferee has contracted to acquire; but
- (b) excludes units which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

(13) Where, during the period within which an offer for the transfer of units to the transferee can be approved, the transferee acquires or contracts to acquire any of the units whose transfer is involved but otherwise than by virtue of the approval of the offer, then the transferee may be treated for the purposes of this section as having acquired or contracted to acquire those units by virtue of the approval of the offer if, and only if —

- (a) the consideration for which the units are acquired or contracted to be acquired (referred to in this subsection as the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the

time referred to in paragraph (a), no longer exceeds the consideration specified in those terms.

(14) In this section and sections 295B and 295C —

“dissenting participant” includes a participant who has not assented to the arrangement or contract and any participant who has failed or refused to transfer his units to the transferee in accordance with the arrangement or contract;

“Official Receiver” means the Official Assignee appointed under the Bankruptcy Act (Cap. 20) and includes his deputy and any person appointed as Assistant Official Assignee;

“real estate investment trust” means a collective investment scheme that is —

(a) authorised under section 286 or recognised under section 287; and

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

Unclaimed money to be paid to Official Receiver

295B.—(1) The Official Receiver who receives moneys arising from the proceeds of a sale or disposal under section 295A shall place the moneys to the credit of a separate account to be entitled the Compulsory Acquisition of Scheme Account.

(2) The interest arising from the investment of the moneys standing to the credit of the Compulsory Acquisition of Scheme Account shall be paid into the Consolidated Fund.

(3) If any person makes any demand for any money placed to the credit of the Compulsory Acquisition of Scheme Account, the Official Receiver, upon being satisfied that that person is entitled to the money, shall authorise payment thereof to be made to him out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to him out of moneys made available by Parliament for the purpose.

(4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made pursuant to subsection (3) may appeal to a court which may confirm, disallow or vary the decision.

(5) Where any unclaimed moneys paid to a person pursuant to subsection (3) are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Compulsory Acquisition of Scheme Account or out of the Consolidated Fund but such other person may have recourse against the first-mentioned person to whom the unclaimed moneys have been paid.

(6) Any unclaimed moneys paid to the credit of the Compulsory Acquisition of Scheme Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account shall, upon the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

Remedies in cases of oppression or injustice

295C.—(1) Any participant of a real estate investment trust may apply to a court for an order under this section on the ground —

(a) that the affairs of the trust are being conducted by the manager or trustee for the trust, or the powers of the directors of the manager or directors of the trustee for the trust are being exercised, in a manner oppressive to one or more of the participants of the trust including himself or in disregard of his or their interests as participants of the trust; or

(b) that some act of the manager or trustee for the trust, carried out in its capacity as manager or trustee for the trust, as the case may be, has been done or is threatened or that some resolution of the participants of the trust or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the participants of the trust including himself.

(2) If on such application the court is of the opinion that either of the grounds referred to in subsection (1) is established, the court may, with a view to bringing to an end to or remedying the matters

complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- 5 (b) regulate the conduct of the affairs of the manager or trustee for the trust in relation to the trust in future;
- (c) authorise civil proceedings against the directors of the manager or directors of the trustee for the trust to be brought in the name of or on behalf of all the participants of the trust as a whole by such person or persons and on such terms as
10 the court may direct;
- (d) provide for the purchase of the units in the trust by other participants of the trust;
- (e) provide that the trust be wound up; or
- 15 (f) provide that the costs and expenses of and incidental to the application for the order are to be raised and paid out of the property of the trust or to be borne and paid in such manner and by such persons as the court deems fit.

(3) Where an order under this section makes any alteration in or
20 addition to the trust deed of any trust, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the manager or trustee of the trust concerned shall not have power, without the leave of the court, to make any further alteration in or addition to the trust deed that is inconsistent with the provisions
25 of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall have the same effect as if duly made by special resolution of the participants of the trust.

(4) A copy of any order made under this section shall be lodged by
30 the applicant with the Authority within 7 days after the making of the order.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not
35 exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

- (6) This section shall apply to a person who is not a participant of a trust but to whom units in the trust have been transmitted by operation of law as it applies to the participants of a trust; and references to a participant or participants shall be construed accordingly.”.

Amendment of section 296

97. Section 296 of the principal Act is amended —

- (a) by deleting the words “between the 14th and 21st days (both days inclusive)” in the 2nd line of subsection (6) and substituting the words “within the period prescribed by the Authority”;
- (b) by deleting the words “the 14th day from the date of lodgment of the prospectus or profile statement with the Authority” in subsection (6A) and substituting the words “such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe”; and
- (c) by inserting, immediately after subsection (6A), the following subsection:

“(6AA) For the purposes of subsections (6) and (6A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.”.

Amendment of section 300

98. Section 300 of the principal Act is amended —

- (a) by deleting the words “holds a representative’s licence” in subsection (2B)(b)(iii) and substituting the words “is a representative”;
- (b) by deleting subsection (2C) and substituting the following subsection:

“(2C) In subsection (2B), “exempt financial adviser” and “representative” have the same meanings as in section 2(1) of the Financial Advisers Act (Cap. 110).”;
- (c) by deleting the word “recognised” in subsection (4)(a) and substituting the word “overseas”; and
- (d) by deleting paragraph (e) of subsection (4) and substituting the following paragraph:

“(e) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or”.

5 **Amendment of section 302B**

99. Section 302B of the principal Act is amended —

- (a) by deleting the word “and” at the end of subsection (1)(c);
- (b) by deleting the full-stop at the end of paragraph (d) of subsection (1) and substituting the word “; and”, and by inserting

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immediately thereafter the following paragraph:

“(e) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

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(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection.”; and

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- (c) by deleting the word “recognised” in subsection (10)(ii) and substituting the word “overseas”.

Amendment of section 302C

100. Section 302C(1) of the principal Act is amended —

- (a) by deleting the word “and” at the end of paragraph (b); and
- (b) by deleting the full-stop at the end of paragraph (c) and substituting the word “; and”, and by inserting immediately

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thereafter the following paragraph:

“(d) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

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(i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer —

(A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and

(B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.”.

Amendment of section 303

101. Section 303 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

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

Amendment of section 304A

102. Section 304A of the principal Act is amended —

(a) by inserting, immediately after the words “and 305B”, the words “but subject to subsection (2)”;

(b) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) Subsection (1) shall not apply where the units in a collective investment scheme acquired are of the same class as, or can be converted into units of the same class as, other units in the scheme —

(a) an offer of which has previously been made in or accompanied by a prospectus; and

(b) which are listed for quotation on a securities exchange.”.

Amendment of section 305

103. Section 305 of the principal Act is amended —

(a) by deleting “\$200,000” in the 7th line of subsection (2) and substituting “\$100,000”;

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

“(c) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —

10 (i) the prospectus has expired pursuant to section 299; or

(ii) the person making the offer has before making the offer —

15 (A) informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection; and

20 (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.”;

(c) by deleting subsection (4); and

25 (d) by deleting the word “recognised” in paragraph (ii) of the definition of “advertisement” in subsection (5) and substituting the word “overseas”.

Amendment of section 305A

104. Section 305A of the principal Act is amended —

(a) by inserting, immediately after the words “and 305B” in subsection (1), the words “ but subject to subsection (5)”;

30 (b) by deleting the word “Securities” in the 1st line of subsection (2) and substituting the words “Subject to subsection (5), securities”;

(c) by deleting the word “Where” in the 1st line of subsection (3) and substituting the words “Subject to subsection (5), where”; and

(d) by inserting, immediately after subsection (4), the following subsection:

“(5) Subsections (1), (2) and (3) shall not apply where the units in a collective investment scheme acquired are of the same class as other units in the scheme —

(a) an offer of which has previously been made in or accompanied by a prospectus; and

(b) which are listed for quotation on a securities exchange.”.

Amendment of section 305B

105. Section 305B of the principal Act is amended —

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

“(b) either —

(i) the offer is made in or accompanied by the offer information statement referred to in paragraph (a); or

(ii) all the conditions in subsection (2A) are satisfied.”; and

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

“(2) Subsection (1) shall only apply to an offer of units referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

(2A) The conditions referred to in subsection (1)(b)(ii) are —

(a) the offer is made using any automated teller machine or such other electronic means as may be prescribed by the Authority;

(b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

(ii) that he should read the offer information statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase units in the collective investment scheme; and

(c) the person making the offer complies with such other requirements as the Authority may prescribe.”.

Amendment of section 317

106. Section 317 of the principal Act is amended —

(a) by deleting the words “section 94” in subsection (1) and substituting the words “sections 94 and 99C”; and

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

“(a) inspect any records kept by the Authority under section 94 or 99C or any prospectus or profile statement lodged with the Authority under Part XIII; or”.

Amendment of section 322

107. Section 322(1) of the principal Act is amended by deleting the words “an approved holding company, a securities exchange, a futures exchange, a recognised market operator, an exempt market operator, a person operating an exempt market, a designated clearing house, a person operating a clearing facility,” in paragraph (a) and substituting the words “an approved exchange, a recognised market operator, an exempt market operator, a person operating a clearing facility, a designated clearing house, an approved holding company,”.

Amendment of section 328

108. Section 328(2) of the principal Act is amended by deleting the words “any approved holding company, securities exchange, futures exchange, recognised market operator, exempt market, person operating an exempt market, designated clearing house,” in the definition of “relevant person” and substituting the words “any approved exchange, recognised market operator, exempt market operator, person operating a clearing facility, designated clearing house, approved holding company,”.

Amendment of section 329

109. Section 329 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) Any person who —

(a) signs any document lodged with the Authority; or

(b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him by the Authority,

shall use due care to ensure that the document is not false or misleading in any material particular.”.

Amendment of section 333

110. Section 333(2) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph:

“(a) offences under sections 6(4) and (5), 8(12), 14(11), 16A(3) and (4), 22, 23(4), 27(11), 28(12), 29(3), 30(4), 32(7), 34(9), 43, 44(10), 46(2), 49(7) and (8), 50(2), 51(2), 52(2), 54(9), 56(2), 61(3), 70, 75(11) and (12), 76(12), 77(4), 78(4), 79(2), 80(14) and (15), 81(9), 81A(10), 81U(2), 81W(8), 81ZA(3), 81ZB(2), 81ZC(2), 81ZD(3), 81ZE(11) and (12), 81ZF(13), 81ZG(4), 81ZJ(10), 81ZL(2), 103, 105, 107(3) and (4), 289(7), 290(4) and 295(6); or”.

Amendment of section 334

111. Section 334(2) of the principal Act is amended by deleting the words “an approved holding company, a securities exchange, a futures exchange, a recognised market operator, an exempt market operator, a

person operating an exempt market, a designated clearing house,” in the definition of “relevant person” and substituting the words “an approved exchange, a recognised market operator, an exempt market operator, a person operating a clearing facility, a designated clearing house, an approved holding company,”.

Amendment of section 337

112. Section 337 of the principal Act is amended —

- (a) by inserting, immediately after subsection (4), the following subsection:

“(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.”; and

- (b) by inserting, immediately after the words “subsection (1) or (4)(a)” in subsection (5), the words “(including any condition or restriction added or varied under subsection (4A))”.

Amendment of section 341

113. Section 341 of the principal Act is amended —

- (a) by deleting the words “or renewal of licences by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives” in subsection (2)(c);

- (b) by inserting, immediately after paragraph (l) of subsection (2), the following paragraph:

“(la) the maintenance by the holder of a capital markets services licence, and a representative of such a holder, of registers of their interests in securities and their duties relating to the registers, and matters relating thereto;”; and

- (c) by inserting, immediately after subsection (3), the following subsections:

“(4) Where a person is charged with an offence for contravening a regulation made under subsection (2)(la), it shall be a defence for the person to prove —

- (a) that his contravention was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and

(b) that —

(i) he was not so aware on the date of the summons issued for the charge; or

(ii) he became so aware before the date of the summons and complied with the regulation within 14 days after becoming so aware.

(5) For the purposes of subsection (4), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at a particular time which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in the securities concerned, was aware of at that time.”.

Amendment of First Schedule

114. Paragraph 4(1) of the First Schedule to the principal Act is amended by deleting paragraph (b) of the definition of “clearing facility” and substituting the following paragraph:

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

Amendment of Second Schedule

115. Part II of the Second Schedule to the principal Act is amended by deleting the word “only” in paragraph (b) of the definition of “real estate investment trust management” and substituting the word “primarily”.

Amendment of Fourth Schedule

116. Items 7 and 9 in the Fourth Schedule to the principal Act are deleted.

Miscellaneous amendments

117. The principal Act is amended —

(a) by deleting the words “or 42(2)” in section 46(1)(e) and substituting the words “, 42(2) or 43A(2)”;

- (b) by deleting the words “a securities exchange or futures exchange” wherever they appear in the following sections and substituting in each case the words “an approved exchange”:

5 Sections 175, 176(2), 177, 179, 181, 182, 183(1) and (3),
184(2), 185, 186(1)(b), (2), (3), (5) and (13), 187(1) and (2),
188(4), 189(2), (3), (5) and (6)(a), 190(1), 192, 193(2) and
194(3);

- (c) by deleting the words “the securities exchange or futures
10 exchange” wherever they appear in the following sections and
substituting in each case the words “the approved exchange”:

 Sections 175(a), 180(3), 183(1) and (2), 188(3) and (4),
189(2)(a) and (b), (6)(b) and (7), 190(2), 191, 192, 193(1) and
(2) and 194(1);

- (d) by deleting the words “securities exchange and each futures
15 exchange” in section 176(1) and substituting the words
“approved exchange”;

- (e) by deleting the words “A securities exchange or futures
 exchange” wherever they appear in the following sections and
substituting in each case the words “An approved exchange”:

20 Sections 180(1), 184(1), 188(1), 189(1), (4) and (7), 190(1) and
194(1);

- (f) by deleting the words “The securities exchange or futures
 exchange” in section 180(2) and substituting the words “The
approved exchange”;

- 25 (g) by deleting the words “the securities exchange or futures
exchange, as the case may be” in sections 184(2), 188(2) and
189(2) and substituting in each case the words “the approved
exchange”; and

- (h) by deleting the words “securities exchange or futures exchange”
30 in the section headings of the following sections and substituting
in each case the words “approved exchange”:

 Sections 184, 189, 190, 191 and 194.

Related and consequential amendments to Business Trusts Act

118. The Business Trusts Act (Cap. 31A) is amended —

- (a) by deleting the definition of “substantial unitholder” in section 2;
- 5 (b) by inserting, immediately after the words “subsection (8)” in section 13(2), the words “or section 137N(1) of the Securities and Futures Act (Cap. 289)”;
- (c) by inserting, immediately after the words “subsection (8)” in section 13(7), the words “or (as the case may be) section 137N(1) of the Securities and Futures Act (Cap. 289)”;
- 10 (d) by inserting, immediately after subsection (17) of section 13, the following subsection:
 - “(18) Subsections (8) to (15) shall not apply in respect of a registered business trust —
 - 15 (a) all or any of the units of which are listed for quotation on the official list of a securities exchange; and
 - (b) to which Subdivision (2) of Division 2 of Part VII of the Securities and Futures Act (Cap. 289) applies.”;
- (e) by repealing sections 37, 38 and 39;
- (f) by deleting the heading of Part VI and substituting the following
- 20 heading:

“CIVIL LIABILITY AND TAKE-OVERS”;

- (g) by inserting, immediately after section 40, the following section:

“Power to acquire units of unitholders dissenting from arrangement or contract approved by 90% majority

25 **40A.**—(1) Where an arrangement or a contract involving the transfer of all of the units, or all of the units in any particular class, in a business trust (referred to in this section as the subject trust) to —

- 30 (a) the trustee of another trust (including the trustee-manager of another business trust and the trustee of a real estate investment trust); or

(b) a corporation,

(referred to in this section as the transferee) has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the units or as to each class of units whose transfer is involved by the holders of not less than 90% of the total number of those units or of the units of that class (other than units already held at the date of the offer by the transferee), the transferee may, at any time within 2 months after the offer has been so approved, give notice in the prescribed manner to any dissenting unitholder that it desires to acquire his units.

(2) When a notice referred to in subsection (1) is given, the transferee shall, unless on an application made by a dissenting unitholder within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting unitholder under subsection (3) (whichever is the later) a court thinks fit to order otherwise, be entitled and bound to acquire those units —

(a) on the terms which under the arrangement or contract the units of the approving unitholders are to be transferred to the transferee; or

(b) if the offer contained 2 or more alternative sets of terms, on the terms which were specified in the offer as being applicable to dissenting unitholders.

(3) Where a transferee has given notice to any dissenting unitholder of the subject trust that it desires to acquire his units, the dissenting unitholder shall be entitled to require the transferee by a demand in writing served on the transferee, within one month from the date on which the notice was given, to supply him with a statement in writing of the names and addresses of all other dissenting unitholders as shown in the register of unitholders of the subject trust; and the transferee shall not be entitled or bound to acquire the units of the dissenting unitholders until 14 days after the posting of the statement of such names and addresses to the dissenting unitholder.

(4) Where, in pursuance of any such arrangement or contract, units in the subject trust are transferred to a transferee or its nominee and those units together with any other units in the subject trust held by the transferee at the date of the transfer
5 comprise or include 90% of the total number of the units in the subject trust or of any class of those units, then —

(a) the transferee shall within one month from the date of the transfer (unless on a previous transfer pursuant to the arrangement or contract it has already complied
10 with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining units in, or of the remaining units of that class of units in, the subject trust who have not assented to the arrangement or contract; and

(b) any such holder may within 3 months from receiving the notice require the transferee to acquire his units.
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(5) Where a unitholder has given notice under subsection (4)(b) with respect to any units, the transferee shall be entitled and bound to acquire those units —

(a) on the terms on which under the arrangement or contract the units of the approving unitholders were transferred to it; or
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(b) on such other terms as are agreed or as the court on the application of either the transferee or the
25 unitholder thinks fit to order.

(6) Where a notice has been given by the transferee under subsection (1) and a court has not, on an application made by the dissenting unitholder, ordered to the contrary, the transferee shall —

(a) after the expiration of one month after the date on which the notice has been given;
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(b) after 14 days after a statement has been supplied to a dissenting unitholder under subsection (3); or

(c) if an application to the court by the dissenting unitholder is then pending, after that application has
35 been disposed of,

transmit a copy of the notice to the trustee of the subject trust together with an instrument of transfer executed on behalf of the unitholder by any person appointed by the transferee and on its own behalf by the transferee, and pay, allot or transfer to the trustee of the subject trust the amount or other consideration representing the price payable by the transferee for the units which by virtue of this section the transferee is entitled to acquire, and the trustee of the subject trust shall thereupon register the transferee as the holder of those units.

(7) Any sums received by the trustee of the subject trust under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that trustee in trust for the several persons who had held the units in respect of which they were respectively received.

(8) Where any consideration other than cash is held in trust by the trustee of the subject trust for any person under this section, the trustee may, after the expiration of 2 years from, and shall, before the expiration of 10 years from, the date on which such consideration was allotted or transferred to him, transfer such consideration to the Official Receiver.

(9) The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him pursuant to section 49.

(10) In determining the units in the subject trust already held by the transferee at the date of the offer under subsection (1) or the percentage of the total number of units in the subject trust or of any class of those units held by the transferee under subsection (4), units held or acquired —

- (a) by a nominee on behalf of the transferee;
- (b) where the transferee is a corporation, by its related corporation or by a nominee of the related corporation;
- (c) where the transferee is the trustee-manager of a business trust or the trustee of a real estate investment trust —

(i) by a person who controls more than 50% of the voting power in the business trust or real estate investment trust, or by a nominee of that person;

(ii) by the trustee-manager of the business trust on its own account, or by the manager for the real estate investment trust, or by a nominee of the trustee-manager or manager; or

(iii) by a related corporation of the trustee-manager for the business trust or the manager for the real estate investment trust or by a nominee of that related corporation; or

(d) where the transferee is the trustee of a trust that is not a business trust or a real estate investment trust, by a related corporation of the trustee (being a corporation) or by a nominee of that related corporation,

shall be treated as held or acquired by the transferee.

(11) For the avoidance of doubt, in this section —

(a) a reference to a transferee (being the trustee of a trust) holding, acquiring or contracting to acquire units in another trust is a reference to his doing any of these as trustee of the first-mentioned trust; and

(b) a reference to a transfer of units of a trust to a transferee (being the trustee of another trust) is a reference to such transfer of units to him as trustee of that other trust.

(12) The reference in subsection (1) to units already held by the transferee —

(a) includes a reference to units which the transferee has contracted to acquire; but

(b) excludes units which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

(13) Where, during the period within which an offer for the transfer of units to the transferee can be approved, the transferee acquires or contracts to acquire any of the units whose transfer is involved but otherwise than by virtue of the approval of the offer, then the transferee may be treated for the purposes of this section as having acquired or contracted to acquire those units by virtue of the approval of the offer if, and only if —

(a) the consideration for which the units are acquired or contracted to be acquired (referred to in this subsection as the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or

(b) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (a), no longer exceeds the consideration specified in those terms.

(14) In this section —

“dissenting unitholder” includes a unitholder who has not assented to the arrangement or contract and any unitholder who has failed or refused to transfer his units to the transferee in accordance with the arrangement or contract;

“real estate investment trust” means a collective investment scheme that is —

(a) authorised under section 286 of the Securities and Futures Act (Cap. 289) or recognised under section 287 of that Act; and

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

(h) by inserting, immediately after subsection (3) of section 69, the following subsection:

“(4) The trustee-manager of a registered business trust is not by reason of anything done under Subdivision (1) of Division 2 of Part VII of the Securities and Futures Act (Cap. 289) —

(a) to be taken for any purpose to have notice of; or

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(b) to be put upon inquiry as to,

a right of a person to or in relation to a unit in the registered business trust for the purposes of this section.”.

Consequential amendments to Companies Act

119. The Companies Act (Cap. 50) is amended —

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(a) by deleting paragraph (a) of section 79(2);

(b) by repealing section 92;

(c) by inserting, immediately after the words “section 165(1)(a)” in section 164(5), the words “of this Act or section 133(1)(a), (b), (c), (d) or (e) of the Securities and Futures Act (Cap. 289)”;

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(d) by inserting, immediately after the words “section 165(1)(b)” in section 164(6), the words “of this Act or section 133(1)(g) (in respect of a change in the particulars of any matter referred to in section 133(1)(a) to (e)) of the Securities and Futures Act”;

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(e) by inserting, immediately after the words “section 165” in section 164(12), the words “of this Act or (as the case may be) section 133 of the Securities and Futures Act (Cap. 289)”;

(f) by inserting, immediately after subsection (9) of section 165, the following subsection:

“(10) Subsection (1)(a) and (b) shall not apply to a person —

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(a) who is a director of a company all or any of the shares of which are listed for quotation on the official list of a securities exchange as defined in the Securities and Futures Act; and

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(b) who is required to make disclosure of the matters referred to in subsection (1)(a) and (b) of this section under section 133 of that Act.”; and

(g) by repealing section 166.

Transitional and savings provisions

120. The Authority may, by regulations, prescribe such transitional and savings provisions as it may consider necessary or expedient within 2 years of the date of commencement of this Act.

EXPLANATORY STATEMENT

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

- (a) to enable new investment products to be offered in response to market needs;
- (b) to modify the regulatory framework for holders of capital markets services licences and their representatives;
- (c) to expand the civil penalty and civil liability regimes under the Act to cover certain other persons and introduce a disgorgement procedure;
- (d) to introduce a regime for recognising foreign business trusts for the purposes of offer of their units to investors;
- (e) to provide for the control of take-overs of holders of capital markets services licences;
- (f) to provide for the compulsory acquisition of minority unitholdings in real estate investment trusts (REITs) and an avenue for seeking relief against oppression of unitholders of REITs;
- (g) to enable the Monetary Authority of Singapore (MAS) to adapt business conduct requirements to market developments and industry needs;
- (h) to consolidate all requirements relating to disclosure of shareholdings of directors, chief executive officers, and substantial shareholders in listed corporations in the Act, and to provide for similar disclosure requirements in respect of units in listed business trusts and listed REITs; and
- (i) to make other amendments to the Act for greater clarity and consistency and more effective regulation of regulated entities under the Act.

The Bill also makes related and consequential amendments to the Business Trusts Act (Cap. 31A) and the Companies Act (Cap. 50).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 (Interpretation) —

- (a) to insert definitions for “appointed representative”, “provisional representative”, “temporary representative” and “public register of representatives” which are terms introduced in the new Division 2 of Part IV;

- (b) to define the term “chief executive officer” in relation to a corporation, for the purposes of the re-enacted Division 1 of Part VII;
- (c) to amend the definition of “closed-end fund” to provide that the trust being excluded from that definition is one which invests *primarily* in real estate and real estate-related assets;
- (d) to amend the definition of “customer” for Part III to also include a customer of an approved exchange, and to provide that the term takes that definition when used in the definition of “user” in section 2(1);
- (e) to enable MAS to make regulations to exclude contracts and classes of contracts from the definition of “futures contract”;
- (f) to delete the definitions of “licence”, “licensed person” and “representative’s licence” as those terms will no longer be used given the amendments made to Part IV;
- (g) to insert a definition for “recognised business trust” in line with the establishment of a recognition regime for foreign business trusts in Division 1A of Part XIII;
- (h) to enable MAS to make regulations to prescribe new products as “securities” for purposes of the Act and to exclude products from the definition of “securities”;
- (i) to reproduce definitions for “substantial shareholder” and “substantial shareholding” from section 81 of the Companies Act (Cap. 50), and to introduce definitions for “substantial unitholder” and “voting unit”, for the purposes of the re-enacted Divisions 1, 2 and 3 and new Division 4 of Part VII (Disclosure of interests);
- (j) to extend the scope of the term “take-over offer” under Part VIII to include authorised collective investment schemes which are listed real estate investment trusts (REITs);
- (k) to insert a definition of “treasury shares” for the purposes of Divisions 1, 2 and 3 of Part VII;
- (l) to insert a definition of “trustee-manager” for the purposes of Division 2 of Part VII; and
- (m) to amend the definition of “unitholder” to cater to collective investment schemes.

Clause 3 inserts a new section 16A regarding the obligation of an approved exchange to have in place systems for managing risks, to obtain the approval of MAS for the establishment of initial position limits and the methodology for varying such limits, and to obtain MAS’ approval if it does not wish to establish position limits. It is intended that the approved exchange as the frontline regulator will be responsible for setting the position limits and MAS will regulate the framework for such setting.

Clause 4 repeals and re-enacts section 31 to provide for the power of MAS to appoint an adviser to advise an approved exchange on the manner of the conduct of its

business under certain exceptional circumstances such as if the exchange is insolvent or is carrying on business in a manner detrimental to statutory objectives.

Clause 5 inserts a new section 43A to provide for the power of MAS to exempt recognised market operators from any provision in Part II. A similar provision currently exists in relation to approved exchanges under section 35.

Clause 6 amends section 45 (Power of Authority to make regulations) to enable MAS to make regulations for carrying out the new section 16A.

Clause 7 amends section 48 (Interpretation of Part III) to make a minor clarification to the definition of “default rules” in subsection (1).

Clause 8 repeals and re-enacts section 61 (Obligation of designated clearing house to manage risks prudently) to make provisions for designated clearing houses similar to those in the new section 16A.

Clause 9 amends section 62 (Obligation in relation to customers’ money and assets held by designated clearing house) to clarify the handling and book-keeping duties of a designated clearing house in relation to its customers’ money and assets. In particular, such money or assets must be kept separate from other money or assets (though money and assets of all customers may be commingled in the same account) and separate books are to be kept for customers’ money and assets deposited by separate members.

Clause 10 repeals and re-enacts section 63 (Permissible use of customers’ money and assets by designated clearing house) to provide greater certainty on the circumstances under which a designated clearing house is allowed to apply customers’ money or assets to meet the obligations of a defaulting member.

Clauses 11 and 12 make technical amendments to sections 64 (Permissible investments of customers’ money and assets by designated clearing house) and 70 (Penalties under Subdivision (1)), respectively.

Clause 13 inserts a new section 80A to make provisions for a designated clearing house similar to those in the new section 31.

Clause 14 amends section 81S (Power of Authority to make regulations) to enable MAS to make regulations for carrying out the re-enacted section 61.

Clause 15 amends section 81U (Requirement for approval) to provide for the power of MAS to exempt a holding company of an approved exchange or a designated clearing house from the requirement to be approved as an approved holding company.

Clause 16 makes consequential amendments to the headings of Part IV and Division 1 of that Part.

Clause 17 repeals section 83 (Need for representative’s licence) due to the replacement of the licensing regime for representatives with a notification regime.

Clause 18 amends section 84 (Application for grant or renewal of licence) to remove references to renewal of a licence, as a capital markets services licence need no longer be renewed, and to delete various subsections relating to the licensing of representatives.

Clause 19 makes various consequential amendments to section 85 (Licence fee) arising from the replacement of the licensing regime for representatives with a notification regime, the removal of the need for a capital markets services licence to be renewed, and the insertion of new section 101A for the making of prohibition orders. It also clarifies that the licence fee in section 85 is an annual fee to be paid on a specified date. A person who fails to pay the licence fee is liable to pay a late payment fee.

Clause 20 amends section 86 (Grant of capital markets services licence) to include, as a ground entitling MAS to refuse an application for the grant of a capital markets services licence, the fact that a prohibition order has been made by MAS against the applicant that remains in force. It also makes other technical amendments arising from the removal of the need for a capital markets services licence to be renewed.

Clause 21 repeals sections 87 (Grant of representative's licence) and 87A (Temporary representative's licence) in light of the replacement of the licensing regime for representatives with a notification regime.

Clause 22 makes various consequential amendments to section 88 (Power of Authority to impose conditions or restrictions) arising from the replacement of the licensing regime for representatives with a notification regime and the removal of the need for a capital markets services licence to be renewed.

Clause 23 repeals section 89 (Period of licence) in light of the removal of the need for a capital markets services licence to be renewed.

Clause 24 makes various consequential amendments to section 90 (Variation of licence) arising from the replacement of the licensing regime for representatives with a notification regime.

Clauses 25 and 26 make consequential amendments to sections 91 (Deposit to be lodged in respect of capital markets services licence) and 92 (False statements in relation to application for grant, renewal or variation of licence), respectively, arising from the removal of the need for a capital markets services licence to be renewed.

Clause 27 makes consequential amendments to section 93 (Notification of change of particulars) arising from the replacement of the licensing regime for representatives with a notification regime and the re-enacted section 94.

Clause 28 repeals and re-enacts section 94 (Register of licensed persons) to replace provisions requiring MAS to keep a register containing specified information of licensed persons, with provisions requiring MAS to keep records on information of holders of capital markets services licences and to publish any part it considers appropriate.

The clause also repeals and re-enacts section 95 (Lapsing, revocation and suspension of licence) to remove provisions relating to the lapsing, revocation and suspension of licences of representatives, and to add new grounds for taking action under that section viz. if a prohibition order has been made against the holder of a capital markets services licence, or if the holder fails to pay the licence fee.

Clause 29 amends section 96 (Approval of chief executive officer and director of holder of capital markets services licence) —

- (a) to provide that the holder of a capital markets services licence must obtain MAS' prior approval when appointing a chief executive officer or director, or when changing the appointment of a non-executive director to that of an executive director;
- (b) to provide that the requirement under paragraph (a) does not apply to a licence holder that is a foreign company in the case of a director or intended director who, at the time of appointment or change, does not reside in Singapore and is not directly responsible for its Singapore business;
- (c) to include, as a ground for refusing an application for approval under paragraph (a), the fact that a prohibition order has been made by MAS against the appointee or intended appointee; and
- (d) to enable MAS to require a licence holder to notify it of a change to any specified attribute of the holder's chief executive officer or director.

Clause 30 amends section 97 (Removal of officer of holder of capital markets services licence) to include, as grounds for MAS to direct the holder of a capital markets services licence to remove an officer, the fact that a prohibition order has been made against the officer or the fact that he is not a fit and proper person for the office. Where the ground for removal is based on a prohibition order made against the officer, MAS need not give the holder an opportunity to be heard.

Clause 31 inserts new sections 97A and 97B to provide for control of take-overs of holders of capital markets services licences.

The new section 97A requires a person to obtain MAS' prior approval before entering into an arrangement relating to shares of the holder of a capital markets services licence, which would result in the person obtaining effective control of the holder. In granting approval, MAS may impose conditions such as restricting his disposal or further acquisition of shares or voting power in the holder and restricting his exercise of voting power in the holder.

The new section 97B enables MAS to serve a notice of objection on a person required to obtain approval under the new section 97A or a person holding 20% or more of the issued share capital of a holder (including persons who have such holding before the operative date of the section) on certain grounds. A person served with a notice of objection may be required to take steps to cease having control of the holder or to cease being a party to an arrangement which will result in him having such control.

Clause 32 makes various consequential amendments to section 98 (Appeals) arising from the replacement of the licensing regime for representatives with a notification regime, the removal of the need for a capital markets services licence to be renewed, and the provision of a right of appeal against prohibition orders under the new section 101A(5).

Clause 33 deletes the heading to Division 2 of Part IV.

Clause 34 amends section 99 (Exemptions from requirement to hold capital markets services licence) to add, as a ground for the withdrawal of exemption, that the exempt person fails to pay the annual fee under section 99A.

Clause 35 amends section 99A (Annual fees payable by exempt person and its representative) —

- (a) to provide that the annual fees are payable by representatives of certain exempt persons rather than representatives of all exempt persons;
- (b) to provide that the annual fee may not be refunded or remitted if a prohibition order is made against the payor; and
- (c) to subject a person who fails to pay the annual fee to a late payment fee.

Clause 36 inserts a new Division 2 entitled “Representatives” to provide for a representative notification regime. A principal who appoints a representative to carry on business in a regulated activity on its behalf has to notify MAS of the appointment and certify the representative’s fitness to be such representative. The fact of the notification and other pertinent information relating to his appointment will be reflected in a public register of representatives to be maintained by MAS for the benefit of members of the public dealing with representatives.

There will be 3 classes of representatives: an appointed representative (who must have fulfilled examination requirements imposed by MAS), a provisional representative (who is currently or was previously regulated overseas as a representative and is given a fixed period of time to fulfil the examination requirements), and a temporary representative (who is to act as a representative only for a short period of time).

The new Division consists of 15 sections.

The new section 99B prohibits a person from acting as a representative or holding himself out as doing so, unless he is an appointed, provisional or temporary representative or a representative of certain exempt persons. A principal is also prohibited from permitting a person so prohibited to carry on business in any type of regulated activity on the principal’s behalf.

The new section 99C requires MAS to maintain records of appointed, provisional and temporary representatives. All or part of those records may be reproduced in a public register of representatives.

The new section 99D defines an appointed representative. He must, inter alia, satisfy MAS’ examination requirements and have his name entered in the public register of representatives as an appointed representative. The section also sets out circumstances in which an individual ceases to be an appointed representative. When an individual ceases to be an appointed representative or to carry on business in any type of regulated activity, his principal must inform MAS.

The new section 99E defines a provisional representative. A provisional representative is one who, inter alia, intends to take an examination to satisfy the examination requirements the fact of which has been notified to MAS, and whose name is entered in the public register of representatives as a provisional representative. The section also sets out circumstances in which an individual ceases to be a provisional representative. His principal must further inform MAS if he satisfies the examination requirements.

The new section 99F defines a temporary representative. The period of time in which a person is a temporary representative must be specified in the public register of representatives against his name. The section also sets out circumstances in which an individual ceases to be a temporary representative.

The new section 99G makes it an offence to contravene certain provisions of new sections 99D, 99E, 99F and 99H relating to the furnishing of information to MAS.

The new section 99H sets out the documents to be lodged by the principal with MAS relating to his appointment of a representative.

The new section 99I enables MAS to exempt persons from any requirement under new sections 99D to 99H.

The new section 99J provides that an appointed, provisional or temporary representative may only act for one principal unless otherwise approved by MAS. An appointed representative may act for more than one principal if the principals are related corporations.

The new section 99K requires an individual to pay a fee for the lodgment of documents by his principal under new section 99H concerning his appointment as an appointed, provisional or temporary representative, and requires the individual to pay a fee for the retention of his name in the public register of representatives.

The new section 99L provides for the manner in which an appointed representative may carry on business in a type of regulated activity additional to that specified in the public register of representatives for him. His principal must lodge a notice with MAS of such additional type of regulated activity which will then be entered in the register.

The new section 99M sets out the grounds for MAS to refuse to enter the name of an individual or any additional type of regulated activity in the public register of representatives, or to revoke or suspend the status of appointed, provisional or temporary representatives. With some exceptions, MAS cannot take such action without giving the affected person an opportunity to be heard. The section also sets out certain duties of MAS in relation to its maintenance of the public register in the event that it takes any revocation or suspension action.

The new section 99N allows MAS to impose by written notice conditions and restrictions on an appointed, temporary or provisional representative. Contravention of any condition or restriction is a criminal offence.

The new section 99O makes it an offence to lodge a false statement with MAS or to omit from any document lodged with MAS any information thereby rendering the document misleading. An individual who provides a false statement to his principal which is subsequently lodged under new section 99H, or omits to give any information to his principal which renders any document so lodged misleading, also commits an offence.

The new section 99P allows a person to appeal to the Minister against any decision of MAS in refusing to enter his name or any additional type of regulated activity in the public register of representatives, or to revoke or suspend his status as an appointed, provisional or temporary representative.

Clause 37 amends section 100 (Power of Authority to make regulations) to enable regulations to be made for various matters relating to the new notification regime for representatives.

Clause 38 makes a consequential amendment to section 101 (Power of Authority to issue written directions) arising from the new notification regime for representatives.

Clause 39 inserts new sections 101A to 101D relating to prohibition orders.

The new section 101A empowers MAS to make a prohibition order against a person in certain specified circumstances e.g. if MAS has suspended or revoked his capital markets services licence or his status as an appointed, provisional or temporary representative or if he is believed to have contravened the Act. The order may, *inter alia*, prohibit him from performing a regulated activity or taking part in the management of the holder of a capital markets services licence.

The new section 101B requires a person against whom a prohibition order is made to comply with it. The holder of a capital markets services licence or an exempt person who has been notified of the order must not employ or use the service of the first-mentioned person if this is prohibited by the order. If a prohibition order is made against the holder of a capital markets services licence or an exempt person not to carry out a regulated activity, it must inform all its representatives of this who must then cease to perform that activity.

The new section 101C enables MAS to vary or revoke a prohibition order on a change of circumstances.

The new section 101D provides that a prohibition order takes effect on the date specified in the order and will not avoid or affect any agreement, transaction or arrangement entered into whether before, on or after its issue.

Clause 40 repeals sections 117 (Certain representations prohibited), 118 (Issue of contract notes), 120 (Disclosure of certain interests in respect of underwriting agreement), 122 (Priority to customers' orders) and 124 (Penalties under Division 1 of Part VI), as well as Division 2 (Securities) and Division 3 (Futures contracts and leveraged foreign exchange trading) of Part VI. Matters dealt with by the repealed provisions are intended to be imposed by regulations: see amendments to section 123.

Clause 41 amends section 123(2) to enable regulations to be made for various business conduct requirements set out in the repealed sections 117, 118, 120, 122 and 125 to 128.

Clause 42 repeals and re-enacts Divisions 1, 2 and 3 of Part VII and introduces a new Division 4.

The new Division 1, dealing with disclosure of interests in listed corporations, consists of 15 sections, namely new sections 130 to 137G.

The new section 130 sets out the scope and interpretation of Division 1.

The new section 131 specifies the persons who are required to comply with Division 1. The section also empowers MAS to exempt any person or class of persons

from any or all of the provisions in Division 1; as well as to grant an extension of time for an obligation to give notice under the Division.

The new section 132 provides MAS with the power to extend provisions in Division 1 to any other person, class of persons, securities, interests in securities or class of securities or interests in securities, or to require disclosure of interests in any entity, arrangement or trust, if MAS considers it necessary in the interests of the public or a section of the public, to protect investors or to enhance market transparency. This is to enable MAS to extend the scope of the notification regime to other securities such as contracts for differences and other derivative instruments, or to other officers of the corporation and persons who by reason of their security interests may exercise a significant influence over the running of the corporation, or to other entities, arrangements or trusts, in line with market developments and international best practices.

The new sections 133 to 137G are divided into 3 subdivisions, namely —

- (a) Subdivision (1) (sections 133 and 134), which sets out the duty of the directors and chief executive officer of a listed corporation to notify the corporation of their interests, or changes in their interests, in securities of the corporation;
- (b) Subdivision (2) (sections 135 to 137F), which re-enacts the existing obligations under Division 4 of Part IV of the Companies Act (Cap. 50) for substantial shareholders of a listed corporation to notify the corporation of their interests, or changes in their interests, in the voting shares of the corporation and extends the obligations to foreign corporations with a primary listing on a securities exchange; and
- (c) Subdivision (3) (section 137G), which sets out the duty of a listed corporation to inform the securities market of notifications it has received from its directors, chief executive officer and substantial shareholders under Subdivisions (1) and (2).

The new section 133 provides that a director or chief executive officer of a listed corporation must notify the corporation of particulars of securities of the corporation in which he has an interest and describe the nature and extent of the interest, within 2 business days after he becomes director or chief executive officer or acquires the interest. Notification must also be made if there is any change in such particulars within 2 business days from the date he becomes aware of the change. In the case of a director of a company, such notification requirements will extend to his interests in a related corporation and participatory interests made available by the company or its related corporation. MAS may also require a director or chief executive officer of the corporation to disclose his interest in other types of securities prescribed by MAS. This is to enable MAS to extend the scope of the notification regime beyond the current interests in securities to other securities such as contracts for differences and other derivative instruments in line with market developments and international best practices.

The new section 134 sets out the penalties for contravening provisions under the new section 133.

The new section 135 sets out the duty of a substantial shareholder of a listed corporation to notify the corporation of particulars of voting shares in the corporation in which he has or had an interest and to describe the nature and extent of the interest. The notice must be given to the corporation within 2 business days after the person becomes aware that he is or had been a substantial shareholder. It must be given notwithstanding that he has ceased to be a substantial shareholder before the expiration of the 2 business day period.

The new section 136 provides that where there is a change in the percentage level of the interests of a substantial shareholder of a listed corporation, the substantial shareholder must give notice in writing to the corporation within 2 business days after he becomes aware of the change. The section further sets out how percentage level should be calculated.

The new section 137 imposes a duty on a substantial shareholder of a listed corporation to notify the listed corporation when he ceases to be a substantial shareholder. The notice must be given to the corporation within 2 business days after he becomes aware that he has ceased to be a substantial shareholder.

The new section 137A provides that where a person authorises another person to hold, acquire or dispose of voting shares or interests in voting shares of a listed corporation, he must ensure that the second-mentioned person notifies him as soon as practicable and in any case, no later than 2 business days after any acquisition or disposal which will or may give rise to a duty on him to give a notice under Subdivision (2).

The new section 137B imposes an obligation on a person holding voting shares in a listed corporation in which another person has an interest, to give notice to the second-mentioned person informing him of any acquisition or disposal as soon as practicable and in any case, no later than 2 business days after the acquisition or disposal. A person may have an interest in shares held by another person e.g. if he is the beneficial owner of those shares or he is deemed to have an interest in those shares because of the operation of the new section 130(5).

The new section 137C provides that a listed corporation must keep a register of substantial shareholders, and must enter in the register information contained in any notice given by a substantial shareholder. The register must be made available for inspection. The listed corporation is also required to furnish a copy or part of the register to a person upon his request and payment of a fee. The section further provides MAS with the power to obtain a copy or part of the register from the listed corporation.

The new section 137D sets out the penalties for contravening provisions under the new sections 135, 136, 137, 137A and 137B.

The new section 137E empowers MAS to apply to a court for certain orders where a substantial shareholder fails to comply with provisions in the new section 135, 136 or 137. The orders which may be granted include an order restraining the shareholder from disposing of his interest, an order restraining him from exercising votes attached to his interests, and an order directing the sale of his shares.

The new section 137F empowers a listed corporation to require any member to disclose the identity of beneficial owners of the voting shares held by him and the extent of their beneficial interests. The corporation may also require any person notified to it as having an interest in the shares to disclose particulars of any beneficial ownership in those shares. Upon receipt of information under the section, the listed corporation is required to record it in the register of substantial shareholders.

The new section 137G requires a listed corporation to announce or disseminate to the securities market any notice it has received from its director, chief executive officer or substantial shareholder. Such announcement or dissemination must be made as soon as practicable and in any case, no later than the end of the business day following the day on which the corporation received the notice.

The new Division 2, dealing with disclosure of interests in a listed registered or recognised business trust or in a trustee-manager of such a trust, consists of 11 sections, namely new sections 137H to 137R.

The new section 137H sets out the scope and interpretation of Division 2.

The new section 137I specifies the persons who are required to comply with Division 2. The section also empowers MAS to exempt any person or class of persons from any or all of the provisions in Division 2 and to grant an extension of time for an obligation to give notice under the Division.

The new sections 137J to 137R are divided into 4 subdivisions, namely —

- (a) Subdivision (1) (sections 137J to 137M), which sets out the requirement for substantial unitholders of a listed registered or recognised business trust to notify the trustee-manager of the business trust of their interests, or changes in their interests, in the voting units in the business trust;
- (b) Subdivision (2) (sections 137N and 137O), which sets out the duty of the directors and chief executive officer of the trustee-manager of a listed registered or recognised business trust to notify the trustee-manager of their interests, or changes in their interests, in units or other securities of the business trust;
- (c) Subdivision (3) (sections 137P and 137Q), which sets out the duty of a person whose percentage of interest in the voting shares in a trustee-manager of a listed registered or recognised business trust reaches, crosses or falls below certain percentages to notify the trustee manager of this; and
- (d) Subdivision (4) (section 137R), which sets out the duty of the trustee-manager of a listed registered or recognised business trust to inform the securities market of its interests, or changes in its interests, in units or derivatives of units in, or debentures or units of debentures of, the business trust, as well as any notification it has received under new section 137J, 137N or 137P.

The new section 137J sets out the duty of a substantial unitholder of a listed registered or recognised business trust to notify the trustee-manager of the business trust of his interest, or changes in his interest, in the voting units in the business trust.

The section applies with modifications sections 135 to 137B to the substantial unitholder.

The new section 137K provides that the trustee-manager of a listed registered or recognised business trust must keep a register of substantial unitholders, similar to new section 137C.

The new section 137L empowers MAS to apply to the court for orders where a substantial unitholder fails to comply with provisions in new section 135, 136 or 137 as applied by new section 137J(1), similar to new section 137E.

The new section 137M empowers the trustee-manager of a listed registered or recognised business trust to require disclosure of particulars of beneficial ownership of voting units in the trust, similar to new section 137F.

The new section 137N provides for the duty of a director or chief executive officer of the trustee-manager of a listed registered or recognised business trust to notify the trustee-manager of particulars of units or derivatives of units, or debentures or units of debentures, of the trust or other securities in which he has an interest, and any change in such particulars. This section is similar to new section 133.

The new section 137O sets out the penalties for contravening provisions under the new section 137N.

The new section 137P provides for a duty of notification by a person whose percentage of interest in the voting shares of a trustee-manager of a listed registered or recognised business trust reaches, crosses or falls below certain percentages. The notice must be made to the trustee-manager within 2 business days after he becomes aware of this.

The new section 137Q sets out the penalties for contravening new section 137P.

The new section 137R imposes a duty on the trustee-manager of a listed registered or recognised business trust to announce or disseminate to the securities market any acquisition or disposal by it of interests in units or derivatives of units in, or debentures or units of debentures of, the business trust, as well as any notice it has received under new section 137J, 137N or 137P. Such announcement or dissemination made to the securities market must be made as soon as practicable and in any case, no later than the end of the business day following the day on which the trustee-manager became aware of the acquisition or disposal, or received the notice.

The new Division 3, dealing with disclosure of interests in a listed REIT and of interests in shares of a responsible person for a listed REIT, consists of 11 sections, namely new sections 137S to 137ZC.

The new section 137S sets out the scope and interpretation of Division 3.

The new section 137T specifies the persons who are required to comply with Division 3. The section also empowers MAS to exempt any person or class of persons from any or all of the provisions in Division 3; as well as to grant an extension of time for an obligation to give notice under the Division.

The new sections 137U to 137ZC are divided into 4 subdivisions, namely —

- (a) Subdivision (1) (sections 137U to 137X), which sets out the duty of substantial unitholders of a listed REIT to notify the trustee and the responsible person of the REIT of their interests, or changes in their interests, in the voting units in the REIT;
- (b) Subdivision (2) (sections 137Y and 137Z), which sets out the duty of the directors and chief executive officer of the responsible person of a listed REIT to notify the responsible person of their interests, or changes in their interests, in units or other securities of the REIT;
- (c) Subdivision (3) (sections 137ZA and 137ZB), which sets out the duty of a person whose percentage of interest in the voting shares in a responsible person for a listed REIT reaches, crosses or falls below certain percentages to notify the responsible person of this; and
- (d) Subdivision (4) (section 137ZC), which sets out the duty of the responsible person for a listed REIT to inform the securities market of its interests, or changes in its interests, in units in the REIT, or debentures or units of debentures of the REIT, as well as any notification it has received under new section 137U, 137Y or 137ZA.

The new section 137U sets out the duty of a substantial unitholder of a listed REIT to notify the trustee and the responsible person of the REIT of his interests, or changes in his interests, in the voting units in the REIT. The section applies with modifications new sections 135 to 137B to the substantial unitholder.

The new section 137V provides that the trustee of a listed REIT must keep a register of substantial unitholders, similar to new sections 137C and 137K.

The new section 137W empowers MAS to apply to the court for orders where a substantial unitholder fails to comply with provisions in new section 135, 136 or 137 as applied by new section 137U(1), similar to new sections 137E and 137L.

The new section 137X empowers the trustee of a listed REIT to require disclosure of particulars of beneficial ownership of voting units in the REIT, similar to new sections 137F and 137M.

The new section 137Y provides for the duty of a director or chief executive officer of the responsible person of a listed REIT to notify the responsible person of particulars of units, debentures or units of debentures or other securities of the REIT in which he has an interest. The section is similar to new sections 133 and 137N.

The new section 137Z sets out the penalties for contravening provisions under the new section 137Y.

The new section 137ZA provides for a duty of notification by a person whose percentage of interest in the voting shares in a responsible person for a listed REIT reaches, crosses or falls below certain percentages. The section is similar to new section 137P.

The new section 137ZB sets out the penalties for contravening provisions under the new section 137ZA.

The new section 137ZC imposes a duty on the responsible person for a listed REIT to announce or disseminate to the securities market any acquisition or disposal by it of interests in units in, or debentures or units of debentures of, the REIT, as well as any notice it has received under new section 137U, 137Y or 137ZA. The section is similar to new section 137R.

The new Division 4 comprising sections 137ZD to 137ZG introduces a civil penalty regime for contraventions of various notification duties under Divisions 1, 2 and 3 when the contravention was done intentionally or recklessly or with knowledge of the false or misleading nature of the notified or announced information.

Clause 43 amends the heading of Division 1 of Part IX as the Division is no longer confined to supervisory powers of MAS but includes that of foreign regulatory authorities as well.

Clauses 44 and 45 amend sections 143 (Exercise of certain powers in relation to securities) and 144 (Exercise of certain powers in relation to futures contracts), respectively, to enable MAS to obtain information from persons under those sections in the event that MAS considers that it may be necessary for it to exercise emergency powers.

Clause 46 amends section 150 (Inspection by Authority) to be consistent with the terms used in Parts II, III and IIIA.

Clause 47 inserts new sections 150A, 150B and 150C.

The new section 150A prohibits the disclosure of any report produced by MAS upon an inspection under section 150, by the inspected person or (if it is a corporation) its officer or auditor, except to certain specified persons in connection with the performance of their duties.

The new section 150B requires any foreign regulatory authority which wishes to conduct an inspection of a capital markets services licence holder or exempt person to first obtain the approval of MAS. The section also sets out the considerations for MAS to grant approval and allows MAS to impose certain conditions on both the foreign regulatory authority and the entity to be inspected.

The new section 150C prohibits the disclosure of any report produced by the foreign regulatory authority upon an inspection under new section 150B, by the inspected person or (if it is a corporation) its officer or auditor, except to certain specified persons in connection with the performance of their duties.

Clause 48 inserts a new section 152A to prohibit the disclosure of any report in respect of any investigation by MAS under section 152, by the investigated person or (if it is a corporation) its officer or auditor, except to certain specified persons in connection with the performance of their duties.

Clause 49 amends section 153(2) (Self-incrimination and savings for advocates and solicitors) to correct a typographical error.

Clause 50 introduces a new Division 4 (comprising new sections 168A, 168B and 168C) in Part IX to allow for the transfer of evidence from MAS to the investigating authorities in criminal proceedings and vice versa. As a contravention of provisions in

Part XII may result in either a criminal prosecution or a civil penalty action, these provisions allow the evidence obtained by one agency to be transferred to the other when a decision is taken on the appropriate forum to hear the case.

The new section 168A defines the terms used in the Division.

The new section 168B allows for evidence obtained by MAS, in the exercise of its powers of investigation, to be handed over to the investigating authorities or the Public Prosecutor for the purposes of criminal investigations or proceedings. The section further clarifies that the evidence is to be treated in the same manner as other evidence before the court and is not inadmissible by reason only that it was first obtained by MAS and not the investigating authority.

The new section 168C conversely allows for evidence obtained in the course of criminal investigations in the exercise of police powers, to be furnished to MAS for the purposes of investigations or civil penalty proceedings in respect of a contravention of any provision in Part XII. The section also clarifies that the evidence is to be treated in the same manner as other evidence before the court and is not inadmissible by reason only that it was first obtained by a police officer or Commercial Affairs Officer and not MAS.

Clause 51 amends section 186 (Application of fund) to clarify that the fidelity fund may only be applied to cover losses arising from dealing in securities or trading of a futures contract on an approved exchange, or an overseas exchange through a trading linkage of an approved exchange.

Clause 52 amends section 196A (Interpretation of Division 1 of Part XII (Prohibited Conduct — Securities)) to allow MAS to prescribe new products to be included in the definition of “securities” and to prescribe products to be excluded from the definition of “securities”.

Clauses 53 and 54 amend sections 204 (Penalties under Division 1 of Part XII) and 212 (Penalties under Division 2 of Part XII), respectively, to provide that criminal proceedings will not be instituted against a person if he has entered into an out-of-court civil penalty settlement with MAS.

Clause 55 amends section 214 (Interpretation of Division 3 of Part XII (Insider Trading)) to allow MAS to prescribe new products to be included in the definition of “securities” and to prescribe products to be excluded from the definition of “securities”.

Clause 56 amends section 218 (Prohibited conduct by connected person in possession of inside information) to clarify that the trust referred to in the section is one which invests primarily, but not only, in real estate and real estate-related assets, and also makes a consequential amendment following the amendments to the definition of “substantial shareholder” in section 2.

Clause 57 amends section 221 (Penalties under Division 3 of Part XII) to provide that criminal proceedings will not be instituted against a person if he has entered into an out-of-court civil penalty settlement with MAS.

Clause 58 makes consequential amendments to section 230 (Unsolicited transactions by holder of capital markets services licence and representatives) arising from the replacement of the licensing regime for representatives with a notification regime.

Clause 59 amends section 234 (Civil liability) to deduct from the amount of compensation that a contravening person is liable to pay the claimant the other sums of compensation a claimant could receive from any other person to whom liability may be attributed under Division 5 or from a third party under an order for disgorgement, arising from the same contravention. This is to prevent a claimant from being over-compensated.

Clause 60 amends section 236 (Civil liability in event of conviction, etc.) to clarify that an order for payment of civil penalty made by way of default judgment cannot form the basis for an order of compensation by the court under the section.

Clause 61 inserts a new Division 5 comprising new sections 236A to 236L.

The new Division 5 introduces a concept of attributed liability: a corporation, a partnership or a limited liability partnership may face liability resulting from a contravention of a provision in Part XII (Market conduct) by its employee, officer, partner or manager (referred to as the contravening person) if it has either consented to or connived in the contravention, or been negligent as to its internal compliance policies and procedures.

The new section 236A defines certain terms used in Division 5.

The new section 236B provides that a corporation will be liable for an offence under any provision in Part XII committed by its employee or officer with its consent or connivance, and for its benefit. The corporation is attributed with liability for the same contravention as that of the employee or officer, and is liable to face either criminal proceedings or a civil penalty action brought by MAS in respect of that contravention. In the case of a civil penalty action, the quantum of civil penalty is assessed based on the profit gained or loss avoided by the corporation as a result of the market misconduct by the employee or officer. The section also sets out the means by which the consent or connivance of a corporation may be proved.

The new section 236C provides that a corporation commits a contravention and is liable to an order for a civil penalty where it fails to prevent or detect a contravention of any provision in Part XII committed by an employee or officer of the corporation for the benefit of the corporation and which is attributable to the negligence by the corporation. The quantum of civil penalty is assessed based on the profit gained or loss avoided by the corporation as a result of the market misconduct by the employee or officer.

The new section 236D provides the equivalent of a civil liability action under section 234 against a corporation which has been attributed liability under section 236B or 236C. The section allows claimants to make claims against the corporation for loss suffered as a result of the employee or officer's contravention. The maximum recoverable amount has deducted from it any other amounts of compensation the claimant may have received from the employee or officer himself, or from any third party under an order for disgorgement.

The new sections 236E, 236F and 236G replicate the provisions in sections 236B, 236C and 236D for partnerships and limited liability partnerships.

The new sections 236H and 236I apply the civil penalty and civil liability regimes under sections 232 and 234, respectively, to an officer or member of the corporation, a partner of the partnership, a partner or manager of the limited liability partnership, or an officer of the unincorporated association or a member of its governing body (referred to as the defendant) where the corporation, partnership, limited liability partnership or unincorporated association has contravened a provision of Part XII and the defendant has consented to or connived in the contravention, or such contravention is attributable to his neglect.

The new section 236J provides that an action under any of the provisions in new sections 236B to 236I cannot be commenced or, if commenced, must be stayed if there has been a finding by a court that the contravening person is not liable for the contravention of market misconduct. It will follow that liability cannot then be attributed to the defendant corporation, defendant partnership or defendant. Civil actions brought by claimants against a defendant corporation, defendant partnership or defendant under new section 236D, 236G or 236I must also be stayed where criminal proceedings or a civil penalty action is brought against the same defendant entity in respect of the same contravention, similar to the procedural rules in section 235 for actions under section 234 (Civil liability).

The new section 236K is the equivalent of section 236 (Civil liability in event of conviction, etc.) and provides for claimants claiming against the defendant corporation, defendant partnership or defendant attributed with liability under Division 5 to file their claims upon the conclusion of the criminal proceedings or civil penalty action under the Division.

The new section 236L empowers MAS or any claimant to apply to court for an order against a third party to disgorge the benefit it has derived from trades conducted for it in contravention of any of the market misconduct provisions in Part XII. The section is intended to prevent unjust enrichment by a third party where the person committing a contravention may not do so for his own account, but for the benefit of the third party. The third party may show cause why the order for disgorgement should not be made. The court may refuse to order disgorgement or may order disgorgement of a lesser sum if it is satisfied that the third party acquired the benefit innocently and had altered its position in reliance on that acquisition. The sum ordered to be disgorged will be distributed to the claimants who file claims for compensation in the same manner as if they were filing claims against the person who committed the contravention. Any sum remaining under the order for disgorgement will be paid into the Consolidated Fund.

Clause 62 inserts a new Division heading to demarcate sections 237 and 238, which apply to Division 4 as well as Division 5.

Clauses 63 and 64 amend sections 237 (Jurisdiction of District Court) and 238 (Rules of Court), respectively, to extend the scope of the District Court's jurisdiction and the rule-making powers to cover the proceedings in Division 5.

Clause 65 amends section 239 (Preliminary provisions) —

- (a) to delete the definition of “chief executive officer” which has been moved to section 2;
- (b) to insert a definition of “limited liability partnership” in light of the expanded definition of “securities” under Part XIII; and
- (c) to amend the definition of “securities” —
 - (i) to enable MAS to regulate the offer of new investment products by including interests in local and foreign limited partnerships and limited liability partnerships as well as any other product prescribed by MAS as securities; and
 - (ii) to enable MAS to exclude products from being securities for the purposes of Part XIII.

Clause 66 inserts a new section 239B to enable MAS to modify the application of provisions of Division 1 of Part XIII to offers of certain prescribed securities. This is to enable MAS to apply an alternative regulatory regime for such offers when this is considered necessary in the interests of the public or for investor protection.

Clause 67 amends section 240 (Requirement for prospectus and profile statement, where relevant) to replace the specified period within which MAS has to register a prospectus or profile statement after lodgment, with a period to be prescribed by regulations, in order to give MAS the flexibility to prescribe a shorter period in an appropriate case and to prescribe different periods for different offers.

Clause 68 amends section 251(9), which sets out various advertisements and publications which are not subject to the advertisement restriction under subsection (1) —

- (a) to provide that a disclosure, notice or report required by an overseas securities exchange will not be subject to that restriction; and
- (b) to replace the exception relating to a report for an institutional investor with an exception for any disclosure, notice, report or publication falling within a prescribed description, in order to give MAS the flexibility to make exceptions to keep up with developments in the securities market.

Clause 69 amends section 268 (Obligations of borrowing entity) to provide that the half-year financial statements of a borrowing entity or its guarantor entity lodged with MAS need not be audited at all.

Clause 70 amends section 272A (Small offers) to insert a new condition that needs to be satisfied before a person can invoke the small offers exemption under the section for any offer of securities. The condition is that there must not be any prospectus registered in respect of the securities or, if a prospectus has been registered, either the prospectus has expired or the person making the offer has informed MAS of its intention to make the offer in reliance on the small offers exemption. This condition addresses a situation where a person changes his mind following registration of the prospectus and decides to make an exempt offer of the securities which may in turn mislead investors to think that the offer is still subject to prospectus requirements under Subdivisions 2 and 3 of Division 1 of Part XIII. The clause also amends subsection

(10) of that section to clarify that a disclosure, notice or report required by an overseas securities exchange will not be regarded as an advertisement.

Clause 71 amends section 272B (Private placement) for a similar purpose to clause 70. The new condition has an additional requirement: if a prospectus has been registered and has not expired, the offeror must inform MAS of its intention to make the offer in reliance on the private placement exemption under the section and take steps to inform prospective investors of this.

Clause 72 amends the exceptions under paragraphs (d) and (e) of section 273(1) (Offer made under certain circumstances) —

- (a) to enable MAS to exclude particular shares and debentures from the scope of those exceptions; and
- (b) to provide that those exceptions are only applicable to offers of shares and debentures which are traded on a securities exchange so as to exclude securities which are merely listed or quoted and not traded.

Clause 73 amends section 275 (Offer made to accredited investors and certain other persons) for a similar purpose to clause 71, to lower the minimum investment amount required for prospectus exemption from \$200,000 to \$100,000, and to clarify that a disclosure, notice or report required by an overseas securities exchange will not be regarded as an advertisement.

Clause 74 amends section 276 (Offer of securities acquired pursuant to section 274 or 275) —

- (a) to provide that where convertible bonds or units of shares or debentures initially acquired pursuant to an offer made in reliance on an exemption under sections 274 and 275 are converted into shares or debentures, those shares or debentures are subject to subsection (1) i.e. if they are sold within 6 months from the date of acquisition to any person other than an institutional or accredited investor or certain other persons, the offer resulting in the sale will be subject to prospectus requirements; and
- (b) to disapply the restrictions in section 276 in a case where the securities of a corporation to be resold are of the same class as other securities of that corporation an offer of which has previously been made with a prospectus and which have been listed for quotation on a securities exchange.

Clause 75 amends section 277 (Offer made using offer information statement) —

- (a) to clarify that subsection (1) (exemption from prospectus requirement for offer made using an offer information statement) will apply only to an offer made within 6 months from the date of lodgment of the offer information statement; and
- (b) to provide that the requirement that the offer must be made in or accompanied by the offer information statement to qualify for the exemption under subsection (1), does not apply in a case where the offer is made using an automated teller machine or other prescribed electronic means and certain other conditions are satisfied.

Clause 76 amends section 282A (Preliminary provisions) to delete the definitions of “chief executive officer” and “trustee-manager” in subsection (1) which have been moved to section 2.

Clause 77 inserts a new section 282BA to enable MAS to modify the application of provisions of Division 1A to certain offers of units in a business trust, for a similar purpose to that stated in clause 66.

Clause 78 amends section 282C (Requirement for prospectus and profile statement, where relevant) to make a reference to a recognised business trust in connection with the establishment of a recognition regime for foreign business trusts under the new Subdivision (2A) of Division 1A of Part XIII. It also makes other amendments to the section for a similar purpose to clause 67.

Clause 79 amends section 282L (Restrictions on advertisements, etc.) for similar purposes to clause 68.

Clause 80 inserts a new Subdivision (2A) of Division 1A of Part XIII to establish a new regime for the recognition of foreign business trusts. An offer of units in a recognised foreign business trust may be offered in accordance with Division 1A of Part XIII. The new Subdivision comprises 3 new sections.

The new section 282TA enables MAS to recognise a foreign business trust if MAS is satisfied of certain matters. It requires MAS to give an applicant for recognition an opportunity to be heard if MAS proposes to refuse any application, with certain exceptions. It also requires the person making the offer, or the issuer or the trustee-manager of a recognised business trust to continue to satisfy certain criteria prescribed by MAS while the trust remains recognised.

The new section 282TB enables MAS to impose conditions or restrictions on the person making the offer, issuer or trustee-manager of the business trust in connection with its recognition. A contravention of such condition or restriction is an offence.

The new section 282TC provides that MAS may revoke, suspend or withdraw the recognition of a business trust under certain circumstances. When revoking a recognition, MAS may issue directions to the person making the offer, the issuer or the trustee-manager of the business trust, including a direction requiring him to give unitholders the option of redeeming or selling back their units to him. A contravention of such direction is an offence.

The new section also enables an applicant for recognition of a business trust to apply to MAS to withdraw such application.

Before revoking or suspending the recognition of a business trust, imposing a direction, or refusing an application to withdraw the recognition of a business trust, MAS must give the affected person an opportunity to be heard except under certain circumstances. The affected person of such action may appeal to the Minister against the action.

Clause 81 makes amendments to section 282V (Small offers) similar to clause 70.

Clause 82 makes amendments to section 282W (Private placement) similar to clause 71.

Clause 83 makes amendments to section 282X (Offer made under certain circumstances) similar to clause 72.

Clause 84 makes amendments to section 282Z (Offer made to accredited investors and certain other persons) similar to clause 73.

Clause 85 makes amendments to section 282ZA (Offer of securities acquired pursuant to section 282Y or 282Z) similar to clause 74.

Clause 86 inserts a new section 282ZAA which deals with a case where any debenture, the initial offer for which has been exempted under Division 1 of Part XIII, is converted into units in a business trust. The prospectus requirements under Division 1A will apply to those units converted from those debentures if they are sold within 6 months of the acquisition of the debentures.

Clause 87 makes amendments to section 282ZB (Offer made using offer information statement) similar to clause 75.

Clause 88 amends section 283 (Interpretation of Division 2) to delete the definition of “chief executive officer” which has been moved to section 2.

Clause 89 amends section 283A (Use of term “real estate investment trust”) to allow the use of the term “real estate investment trust” or any derivative of that term in connection with an offer made only to an institutional investor, a relevant person defined in section 305, or a person acquiring as principal and for a consideration of at least \$100,000 per transaction. The Securities and Futures (Offers of Investments) (Use of Term “Real Estate Investment Trust”) Order 2007 (G.N. No. S 227/2007) will consequently be revoked.

Clause 90 amends section 284A (Disapplication of Division 2 of Part XIII to certain offers and invitations) to provide that section 283A (Use of term “real estate investment trust”) still applies to an offer to which an order disapplying Division 2 of Part XIII has been made.

Clause 91 amends section 284B (Division 2 of Part XIII not to apply to certain collective investment schemes which are business trusts) to provide that section 283A (Use of term “real estate investment trust”) still applies to an offer notwithstanding that Division 2 of Part XIII has been disappplied to that offer under that section.

Clause 92 inserts a new section 284C to enable MAS to modify the application of provisions of Division 2 to certain offers of units in a collective investment scheme, for a similar purpose to that stated in clause 66.

Clause 93 amends the heading of section 285 (Offers of units in collective investment schemes) to more accurately reflect its subject matter.

Clause 94 amends section 286 (Authorised schemes) —

- (a) to provide that the reference to a collective investment scheme under subsection (3)(a)(i) is to one that is a trust that invests *primarily* in real estate and real estate-related assets; and
- (b) to clarify that the right of MAS to refuse to authorise a collective investment scheme under subsection (5) is without prejudice to its right to refuse to

authorise the scheme if it is not satisfied of any of the matters set out in subsection (2).

Clause 95 amends section 287 (Recognised schemes) for a similar purpose to clause 94.

Clause 96 inserts new sections 295A, 295B and 295C.

The new section 295A introduces for REITs a regime for the compulsory acquisition of minority unitholdings similar to that applicable to companies under section 215 of the Companies Act (Cap. 50). An offeror who is making a general offer for units in a REIT will be able to compulsorily acquire the units of the dissenting minority if he has obtained acceptances in respect of more than 90% of the units offered for. The new section also allows minority participants to require an offeror to acquire their units once an offeror and its nominees hold 90% of the total number of units in issue.

The new section 295B deals with the procedure where unclaimed moneys from a transfer of units under the new section 295A are received by the Official Receiver.

The new section 295C enables a participant of a REIT to seek judicial redress where he or other participants has been oppressed or his or their interests have been disregarded or where a resolution or act unfairly discriminates or is otherwise prejudicial to him or them. The provision is similar to that available to members of a company under section 216 of the Companies Act.

Clause 97 amends section 296 (Requirement for prospectus and profile statement, where relevant) for a similar purpose to clause 67.

Clause 98 amends section 300 (Restrictions on advertisements, etc.) to delete all references to representative's licence. It also makes other amendments to the section for purposes similar to clause 68.

Clause 99 makes amendments to section 302B (Small offers) similar to clause 70.

Clause 100 makes amendments to section 302C (Private placement) similar to clause 71.

Clause 101 makes amendments to section 303 (Offer or invitation made under certain circumstances) similar to clause 72.

Clause 102 amends section 304A (First sale of units acquired pursuant to section 304) to provide that subsection (1) (first sale of units acquired pursuant to an offer made in reliance on an exemption under section 304 is subject to prospectus requirements unless sold to an institutional investor) does not apply when units of the same class are listed on a securities exchange and a prospectus has been issued in connection with a previous offer of those units.

Clause 103 makes amendments to section 305 (Offer made to accredited investors and certain other persons) similar to clause 73.

Clause 104 amends section 305A (First sale of units acquired pursuant to section 305) to provide that the various resale restrictions under the section do not apply

where units of the same class as those acquired are listed on a securities exchange and a prospectus is issued in connection with a previous offer of the units.

Clause 105 makes amendments to section 305B (Offer made using offer information statement) similar to clause 75.

Clause 106 amends section 317 (Records) to provide that the duty of MAS to keep records under the section is subject to the provisions of the new section 99C in the case of records of representatives, and that a person may on payment of a fee inspect such records.

Clauses 107 and 108 amend sections 322 (Power of Authority to publish information) and 328 (Falsification of records by officer, employee or agent of relevant person), respectively, to be consistent with the terms used in Parts II, III and IIIA.

Clause 109 amends section 329 (Duty not to furnish false information to Authority) to provide that a person who lodges with MAS any document by electronic means must use due care to ensure that it is not false or misleading in a material particular.

Clause 110 amends the list of offences to which section 333(1) (court may impose twice the maximum amount of fine for an offence under the Act in the case of a corporation) applies.

Clause 111 amends section 334 (Power of Authority to reprimand for misconduct) for a similar purpose to clauses 107 and 108.

Clause 112 amends section 337 (Exemption) to enable MAS to add to, vary or revoke any condition or restriction of an exemption.

Clause 113 makes a consequential amendment to section 341 (Regulations) arising from the removal of the need for capital markets services licences to be renewed. The section is also amended to enable regulations to be made for the maintenance of a register of interests in securities. This matter is dealt with by sections 130 to 136 which will be repealed.

Clause 114 amends the definition of “clearing facility” in paragraph 4(1) of the First Schedule to clarify the type of facilities which may be prescribed by MAS as clearing facilities for the purposes of the Act.

Clause 115 amends the definition of “real estate investment trust management” in Part II of the Second Schedule to provide that the reference in that definition to a collective investment scheme is to one that is a trust that invests *primarily* in real estate and real estate-related assets.

Clause 116 makes technical amendments to the Fourth Schedule by deleting items 7 and 9.

Clause 117 amends various provisions of the Act to replace the words “securities exchange or futures exchange” with “approved exchange” and to insert in section 46 (Power of Authority to issue directions) to enable MAS to issue directions to ensure compliance with conditions or restrictions imposed under new section 43A(2).

Clause 118 makes certain amendments to the Business Trusts Act (Cap. 31A) —

- (a) as the requirement on disclosure of interests in a listed registered business trust are now set out in Division 2 of Part VII of the Securities and Futures Act (Cap. 289) (amendments of sections 2 and 69 and repeal of sections 37, 38 and 39);
- (b) to dispense with the various disclosure requirements under section 13 in the case of a listed registered business trust, in light of the new section 137N of the Securities and Futures Act; and
- (c) to introduce for registered business trusts a regime for the compulsory acquisition of units of a minority holder similar to the new section 295A of the Securities and Futures Act (new section 40A).

Clause 119 makes various consequential amendments to the Companies Act (Cap. 50) as a result of the transfer of the requirements for the disclosure of interests in a listed company from the Companies Act to the Securities and Futures Act.

Section 79 of the Companies Act is amended to disapply Division 4 (Substantial shareholdings) of Part IV of the Companies Act to a listed company.

Section 92 of the Companies Act is repealed as the requirement in that section is now set out in section 137F of the Securities and Futures Act.

Section 164 of the Companies Act, which requires a company (whether listed or not) to keep a register of particulars of its director's shareholdings and other interests, is amended as the duty of a director of a listed company to disclose to the company particulars to be entered in the register is now set out in section 133 of the Securities and Futures Act.

Section 165 of the Companies Act is amended to provide that the duty under subsection (1)(a) and (b) to disclose particulars of shareholdings and other interests does not apply to a director of a listed company, as such duty is now set out in the new section 133 of the Securities and Futures Act.

Section 166 of the Companies Act is repealed in light of the new section 137G of the Securities and Futures Act (duty of listed company to notify securities market of disclosures made to it).

Clause 120 enables MAS to make regulations to prescribe transitional and savings provisions.

EXPENDITURE OF PUBLIC MONEY

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