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Securities and Futures Act

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

<i>Section</i>	<i>Pages</i>
1. Short title	22
2. Interpretation	23
3. Associated person	42
4. Interest in securities	45
4A. Specific classes of investors	47

PART II

MARKETS

5. Objectives of this Part	49
<i>Division 1 — Establishment of Markets</i>	
6. Requirement for approval or recognition	49
<i>Subdivision (1) — Approved exchange and recognised market operator</i>	
7. Application for approval or recognition	50
8. Power of Authority to approve exchanges and recognise market operators	51
9. General criteria to be taken into account by Authority ...	55
10. Annual fees payable by approved exchange and recognised market operator	57
11. Change in status	57
12. Cancellation of approval or recognition	58
13. Power of Authority to revoke approval and recognition ...	58
<i>Subdivision (2) — Exempt market operator</i>	
14. Power of Authority to exempt corporations from approval or recognition	60

<i>Section</i>	<i>Pages</i>
15. Power of Authority to revoke exemption	62
<i>Division 2 — Regulation of Approved Exchanges</i>	
<i>Subdivision (1) — Obligations of approved exchanges</i>	
16. General obligations	64
17. Obligation to notify Authority of certain matters	65
18. Obligation to maintain proper records	67
19. Obligation to submit periodic reports	67
20. Obligation to assist Authority	67
21. Obligation to maintain confidentiality	68
22. Penalties under this Subdivision	68
<i>Subdivision (2) — Rules of approved exchanges</i>	
23. Business rules and listing rules of approved exchanges ...	68
24. Business rules of approved exchanges have effect as contract	69
25. Power of court to order observance or enforcement of business rules or listing rules	69
26. Non-compliance with business rules or listing rules not to substantially affect rights of person	70
<i>Subdivision (3) — Matters requiring approval of Authority</i>	
27. Control of substantial shareholding in approved exchanges	71
28. Approval of chairman, chief executive officer, director and key persons	74
29. Power of Authority to approve instruments, contracts and transactions	76
30. Listing of approved exchanges on securities market	77
<i>Subdivision (4) — Powers of Authority</i>	
31. Fixing of position and trading limits in futures contracts ...	78
32. Power of Authority in securities market	79
33. Additional powers of Authority in respect of auditors ...	81
34. Emergency powers of Authority	82

<i>Section</i>		<i>Pages</i>
----------------	--	--------------

- | | | |
|-----|---|----|
| 35. | Power of Authority to exempt approved exchanges from provisions of this Part | 84 |
|-----|---|----|

Subdivision (5) — Immunity

- | | | |
|-----|--|----|
| 36. | Immunity from criminal or civil liability | 84 |
|-----|--|----|

*Division 3 — Regulation of Recognised
Market Operators*

- | | | |
|-----|--|----|
| 37. | General obligations | 85 |
| 38. | Obligation to notify Authority of certain matters | 85 |
| 39. | Obligation to maintain proper records | 86 |
| 40. | Obligation to submit periodic reports | 86 |
| 41. | Obligation to assist Authority | 86 |
| 42. | Power of Authority to approve instruments, contracts and transactions | 86 |
| 43. | Penalties under this Division | 87 |

Division 4 — General Powers of Authority

- | | | |
|-----|---|----|
| 44. | Power of Authority to remove officers | 87 |
| 45. | Power of Authority to make regulations | 90 |
| 46. | Power of Authority to issue directions | 90 |

PART III

CLEARING FACILITIES

- | | | |
|-----|------------------------------------|----|
| 47. | Objectives of this Part | 91 |
| 48. | Interpretation of this Part | 91 |

Division 1 — Establishment of Clearing Facilities

- | | | |
|-----|--|----|
| 49. | Requirement to notify | 94 |
| 50. | Provision of information to Authority | 95 |
| 51. | Notification of change of particulars | 95 |
| 52. | Obligation to assist Authority | 95 |
| 53. | Exemption | 96 |
| 54. | Power to stop commencement or order cessation | 96 |

*Division 2 — Designation of Persons
Operating Clearing Facilities*

<i>Section</i>	<i>Pages</i>
55. Designation of persons operating clearing facilities	98
56. Prohibition on holding out	99
57. General criteria to be taken into account by Authority ...	100
58. Withdrawal of designation	100

*Division 3 — Regulation of Designated
Clearing Houses*

*Subdivision (1) — Obligations of designated
clearing houses*

59. General obligations	101
60. Obligation to notify Authority of certain matters	102
61. Obligation to manage risks prudently	103
62. Obligation in relation to customers' money and assets held by designated clearing house	104
63. Permissible use of customers' money and assets by designated clearing house	105
64. Permissible investments of customers' money and assets by designated clearing house	106
65. Obligation to maintain proper records	107
66. Obligation to submit periodic reports	107
67. Obligation to assist Authority	107
68. Obligation to maintain confidentiality	107
69. Annual fees payable by designated clearing house	108
70. Penalties under this Subdivision	108

*Subdivision (2) — Rules of designated
clearing houses*

71. Business rules of designated clearing houses	108
72. Business rules of designated clearing houses have effect as contract	109
73. Power of court to order observance or enforcement of business rules	110
74. Non-compliance with business rules not to substantially affect rights of person	110

*Subdivision (3) — Matters requiring
approval of Authority*

<i>Section</i>	<i>Pages</i>
75. Control of substantial shareholding in designated clearing houses	110
76. Approval of chairman, chief executive officer, director and key persons	114
77. Listing of designated clearing houses on securities market	116

Subdivision (4) — Powers of Authority

78. Power to impose conditions or restrictions	117
79. Power of Authority to issue directions	117
80. Power to order cessation of designated clearing houses ...	118
81. Emergency powers of Authority	121
81A. Power of Authority to remove officers	123
81B. Additional powers of Authority in respect of auditors ...	125
81C. Power of Authority to exempt designated clearing houses from provisions of this Part	126

Subdivision 5: Immunity

81D. Immunity from criminal or civil liability	127
---	-----

Division 4 — Insolvency

81E. Application of this Division	127
81F. Proceedings of designated clearing house shall take precedence over law of insolvency	127
81G. Supplementary provisions as to default proceedings	128
81H. Duty to report on completion of default proceedings ...	129
81I. Net sum payable on completion of default proceedings ...	130
81J. Disclaimer of onerous property, rescission of contracts, etc.	130
81K. Adjustment of prior transactions	131
81L. Right of relevant office holder to recover certain amounts arising from certain transactions	132
81M. Application of market collateral not affected by certain other interest, etc.	133
81N. Enforcement of judgments over property subject to market charge, etc.	134

<i>Section</i>	<i>Pages</i>
81O. Law of insolvency in other jurisdictions	134
81P. Participant to be party to certain transactions as principal	135
81Q. Preservation of rights, etc.	136
81R. Immunity from criminal or civil liability	136

Division 5 — General Powers of Authority

81S. Power of Authority to make regulations	137
--	-----

PART IIIA

APPROVED HOLDING COMPANIES

81T. Objectives of this Part	137
-------------------------------------	-----

Division 1 — Establishment of Approved Holding Companies

81U. Requirement for approval	138
81V. Application for approval	138
81W. Power of Authority to approve holding companies	138
81X. Annual fees payable by approved holding company	140
81Y. Cancellation of approval	140
81Z. Power of Authority to revoke approval	140

Division 2 — Regulation of Approved Holding Companies

81ZA. Obligation to notify Authority of certain matters	142
81ZB. Obligation to submit periodic reports	143
81ZC. Obligation to assist Authority	144
81ZD. Obligation to maintain confidentiality	144
81ZE. Control of substantial shareholding in approved holding companies	145
81ZF. Approval of chairman, chief executive officer, director and key persons	149
81ZG. Listing of approved holding companies on securities market	150
81ZH. Additional powers of Authority in respect of auditors ...	151
81ZI. Power of Authority to exempt approved holding companies from provisions of this Part	152

<i>Section</i>	<i>Pages</i>
81ZJ. Power of Authority to remove officers	153
81ZK. Power of Authority to make regulations	155
81ZL. Power of Authority to issue directions	155

PART IV

CAPITAL MARKETS SERVICES LICENCE
AND REPRESENTATIVE'S LICENCE*Division 1 — Licensing*

82.	Need for capital markets services licence	156
83.	Need for representative's licence	157
84.	Application for grant or renewal of licence	158
85.	Licence fee	159
86.	Grant of capital markets services licence	160
87.	Grant of representative's licence	162
87A.	Temporary representative's licence	164
88.	Power of Authority to impose conditions or restrictions ...	166
89.	Period of licence	167
90.	Variation of licence	167
91.	Deposit to be lodged in respect of capital markets services licence	168
92.	False statements in relation to application for grant, renewal or variation of licence	168
93.	Notification of change of particulars	169
94.	Register of licensed persons	169
95.	Lapsing, revocation and suspension of licence	170
96.	Approval of chief executive officer and director of holder of capital markets services licence	174
97.	Removal of officer of holder of capital markets services licence	175
98.	Appeals	177

Division 2 — Exemptions

99.	Exemptions from requirement to hold capital markets services licence	177
-----	--	-----

<i>Section</i>		<i>Pages</i>
----------------	--	--------------

99A.	Annual fees payable by exempt person and its representative	179
------	--	-----

Division 3 — General

100.	Power of Authority to make regulations	180
101.	Power of Authority to issue written directions	180

PART V

BOOKS, CUSTOMER ASSETS AND AUDIT

Division 1 — Books

102.	Keeping of books and furnishing of returns	181
103.	Penalties under this Division	182

Division 2 — Customer Assets

103A.	Interpretation of this Division	182
104.	Handling of customer assets	182
104A.	Non-availability of customer money and other assets for payment of debt	183
105.	Penalties under this Division	183

Division 3 — Audit

106.	Appointment of auditors	183
107.	Lodgment of annual accounts, etc.	184
108.	Reports by auditor to Authority in certain cases	185
109.	Power of Authority to appoint auditor	185
110.	Power of auditors appointed by Authority	186
111.	Offence to destroy, conceal, alter, etc., books	187
112.	Safeguarding of books	187
113.	Restriction on auditor's and employee's right to communicate certain matters	188
114.	Exchanges, etc., may impose additional obligations on members	188
115.	Additional powers of Authority in respect of auditors	188
116.	Defamation	189

PART VI

CONDUCT OF BUSINESS

Division 1 — General

<i>Section</i>		<i>Pages</i>
117.	Certain representations prohibited	189
118.	Issue of contract notes	189
119.	<i>Restrictions on granting unsecured advances, loans or credit facilities to officers, etc., of holder of capital markets services licence (Repealed)</i>	190
120.	Disclosure of certain interests in respect of underwriting agreement	190
121.	<i>Recommendations by licensed person (Repealed)</i>	191
122.	Priority to customers' orders	191
123.	Power of Authority to make regulations	192
124.	Penalties under this Division	195

Division 2 — Securities

125.	Dealings as principal	195
------	-----------------------	-----

Division 3 — Futures Contracts and Leveraged Foreign Exchange Trading

126.	Trading against customer	196
127.	Cross-trading	197
128.	Risk disclosure by certain persons	197
129.	Penalties under this Division	198

PART VII

DISCLOSURE OF INTERESTS

Division 1 — Registers of Interests in Securities

130.	Application of this Division	198
131.	Register of securities	199
132.	Notice of particulars to Authority	199
133.	Place at which register is kept	200
134.	Defence to prosecution	200
135.	Production of register	201
136.	Extract of register	201

Division 2 — Disclosure by Substantial Shareholders

Section *Pages*

137.	Duty of substantial shareholders to notify securities exchange	201
------	---	-----

Division 3 — Disclosure by Substantial Unitholders

137A.	Duty of substantial unitholders to notify securities exchange	202
137B.	Duty of substantial unitholders to notify trustee of collective investment scheme	202

PART VIII

SECURITIES INDUSTRY COUNCIL
AND TAKE-OVER OFFERS

138.	Securities Industry Council	203
139.	Take-over Code	204
140.	Offences relating to take-over offers	206

PART IX

SUPERVISION AND INVESTIGATION

Division 1 — Supervisory Powers of Authority

*Subdivision (1) — Powers of Authority to
require disclosure of information about
securities and futures contracts*

141.	Interpretation of this Subdivision	206
142.	Acquisition and disposal of securities or futures contracts, etc.	206
143.	Exercise of certain powers in relation to securities	207
144.	Exercise of certain powers in relation to futures contracts	209
145.	Self-incrimination	209
146.	Savings for advocates and solicitors	210
147.	Immunities	210
148.	Offences	210
149.	Copies of or extracts from documents to be admitted in evidence	211

Subdivision (2) — Inspection powers of Authority

150.	Inspection by Authority	211
------	--------------------------------	-----

*Division 2 — Power of Minister to Appoint Inspector
for Investigating Dealings in Securities, etc.*

Section *Pages*

151. Power of Minister to appoint inspectors 213

Division 3 — Investigative Powers of Authority

Subdivision (1) — General

152. Investigation by Authority 213

153. Self-incrimination and savings for advocates and solicitors 215

Subdivision (2) — Examination of persons

154. Requirement to appear for examination 215

155. Proceedings at examination 216

156. Requirements made of examinee 216

157. Examination to take place in private 216

158. Record of examination 217

159. Giving copies of record to other persons 217

160. Copies given subject to conditions 217

161. Record to accompany report 218

162. Offences under this Subdivision 218

Subdivision (3) — Powers to obtain information

163. Power of Authority to order production of books 219

164. Application for warrant to seize books not produced ... 219

165. Powers where books are produced or seized 220

166. Powers where books not produced 222

167. Copies of or extracts from books to be admitted in
evidence 222

168. Offences under this Part 222

PART X

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

169. Interpretation of this Part 223

170. Conditions for provision of assistance 224

171. Other factors to consider for provision of assistance ... 225

<i>Section</i>	<i>Pages</i>
172. Assistance that may be rendered	226
173. Offences under this Part	227
174. Immunities	228

PART XI

INVESTOR COMPENSATION SCHEME

175. Interpretation of this Part	228
176. Establishment of fidelity fund	229
177. Moneys constituting fidelity fund	229
178. Fund to be kept in separate bank account	229
179. Payments out of fidelity fund	230
180. Accounts of fund	230
181. Fidelity fund to consist of amount of \$20 million, etc. ...	231
182. Provisions if fund is reduced below minimum amount ...	231
183. Levy to meet liabilities	231
184. Power of securities exchange or futures exchange to make advances to fund	232
185. Investment of fund	232
186. Application of fund	232
187. Claims against fund	235
188. Notice calling for claims against fund	236
189. Power of securities exchange or futures exchange to settle claims	236
190. Power of securities exchange or futures exchange to require production of evidence	238
191. Subrogation of securities exchange or futures exchange to rights, etc., of claimant upon payment from fund	238
192. Payment of claims only from fund	238
193. Provision where fund insufficient to meet claims or where claims exceed total amount payable	239
194. Power of securities exchange or futures exchange to enter into contracts of insurance	239
195. Application of insurance moneys	240

PART XII

MARKET CONDUCT

Division 1 — Prohibited Conduct — Securities

<i>Section</i>		<i>Pages</i>
196.	Application of this Division	240
196A.	Interpretation of this Division	241
197.	False trading and market rigging transactions	242
198.	Securities market manipulation	243
199.	False or misleading statements, etc.	244
200.	Fraudulently inducing persons to deal in securities	245
201.	Employment of manipulative and deceptive devices	245
202.	Dissemination of information about illegal transactions	246
203.	Continuous disclosure	246
204.	Penalties under this Division	247

*Division 2 — Prohibited Conduct —
Futures Contracts, Leveraged
Foreign Exchange Trading*

205.	Application of this Division	247
206.	False trading	248
207.	Bucketing	248
208.	Manipulation of price of futures contract and cornering	248
209.	Fraudulently inducing persons to trade in futures contracts	249
210.	Employment of fraudulent or deceptive devices, etc.	249
211.	Dissemination of information about illegal transactions	249
212.	Penalties under this Division	250

Division 3 — Insider Trading

213.	Application of this Division	250
214.	Interpretation of this Division	251
215.	Information generally available	254
216.	Material effect on price or value of securities	254
217.	Trading and procuring trading in securities	255
218.	Prohibited conduct by connected person in possession of inside information	255

<i>Section</i>	<i>Pages</i>
219. Prohibited conduct by other persons in possession of inside information	258
220. Not necessary to prove intention to use	259
221. Penalties under this Division	260
222. Exception for redemption of units in collective investment scheme	260
223. Exception for underwriters	260
224. Exception for purchase pursuant to legal requirement ...	261
225. Exception for information communicated pursuant to legal requirement	261
226. Attribution of knowledge within corporations	261
227. Attribution of knowledge within partnerships and limited liability partnerships	262
228. Exception for knowledge of person's own intentions or activities	264
229. Exception for corporations and its officers, etc.	264
230. Unsolicited transactions by holder of capital markets services licence and representatives	265
231. Parity of information defences	265
<i>Division 4 — Civil Liability</i>	
232. Civil penalty	266
233. Action under section 232 not to commence, etc., in certain situations	267
234. Civil liability	268
235. Action under section 234 not to commence, etc., in certain situations	269
236. Civil liability in event of conviction, etc.	270
237. Jurisdiction of District Court	272
238. Rules of Court	272

PART XIII

OFFERS OF INVESTMENTS

*Division 1 — Shares and Debentures**Subdivision (1) — Interpretation*

239. Preliminary provisions	272
------------------------------------	-----

<i>Section</i>	<i>Pages</i>
239A. Authority may disapply this Division to certain offers ...	278
<i>Subdivision (2) — Prospectus requirements</i>	
240. Requirement for prospectus and profile statement, where relevant ...	278
240A. Debenture issuance programme ...	286
241. Lodging supplementary document or replacement document ...	287
242. Stop order for prospectus and profile statement ...	296
243. Contents of prospectus ...	300
244. <i>Invitation to public to lend money to or to deposit money with corporation (Repealed)</i> ...	302
245. Retention of over-subscriptions and statement of asset-backing in debenture issues ...	302
246. Contents of profile statement ...	302
247. Exemption from requirements as to form or content of prospectus or profile statement ...	304
248. Exemption for certain governmental and international entities as regards signing of copy of prospectus or profile statement by all directors or equivalent persons ...	305
249. Expert's consent to issue of prospectus or profile statement containing statement by him ...	305
249A. Consent of issue manager and underwriter to being named in prospectus or profile statement ...	307
250. Duration of validity of prospectus and profile statement ...	308
251. Restrictions on advertisements, etc. ...	309
252. Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies ...	315
253. Criminal liability for false or misleading statements ...	316
254. Civil liability for false or misleading statements ...	319
255. Defences ...	322
256. <i>Offer information statement for renounceable rights issues (Repealed)</i> ...	323
257. Document containing offer of securities for sale deemed prospectus ...	323
258. Application and moneys to be held in trust in separate bank account until allotment ...	324

<i>Section</i>	<i>Pages</i>
259. Allotment of securities where prospectus indicates application to list on securities exchange	325
260. Prohibition of allotment unless minimum subscription received	328
<i>Subdivision (3) — Debentures</i>	
261. Preliminary provisions	330
262. Offer of asset-backed securities	330
263. <i>Retirement of trustees (Repealed)</i>	331
264. <i>Contents of trust deed (Repealed)</i>	331
265. Power of court in relation to certain irredeemable debentures	331
266. Duties of trustees	332
267. Powers of trustee to apply to court for directions, etc. ...	334
267A. Right of Authority, securities exchange and holders of debentures to apply to court for order	335
268. Obligations of borrowing entity	335
269. Obligation of guarantor entity to furnish information ...	339
270. Loans and deposits to be immediately repayable on certain events	339
271. Liability of trustees for debenture holders	341
<i>Subdivision (4) — Exemptions</i>	
272. Issue or transfer of securities for no consideration	342
272A. Small offers	342
272B. Private placement	349
273. Offer made under certain circumstances	351
274. Offer made to institutional investors	355
275. Offer made to accredited investors and certain other persons	356
276. Offer of securities acquired pursuant to section 274 or 275	359
277. Offer made using offer information statement	360
278. Offer in respect of international debentures	362
279. Offer of debentures made by Government or international financial institutions	362
280. Making offer using automated teller machine or electronic means	363

<i>Section</i>	<i>Pages</i>
281. Revocation of exemption	363
282. Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act ...	364
<i>Division 1A — Business Trusts</i>	
<i>Subdivision (1) — Interpretation</i>	
282A. Preliminary provisions	364
282B. Division not to apply to certain business trusts which are collective investment schemes	368
<i>Subdivision (2) — Prospectus requirements</i>	
282C. Requirement for prospectus and profile statement, where relevant	368
282D. Lodging supplementary document or replacement document	375
282E. Stop order for prospectus and profile statement	384
282F. Contents of prospectus	387
282G. Contents of profile statement	390
282H. Exemption from requirements as to form or content of prospectus or profile statement	391
282I. Expert's consent to issue of prospectus or profile statement containing statement by him	392
282J. Consent of issue manager and underwriter to being named in prospectus or profile statement	393
282K. Duration of validity of prospectus and profile statement	395
282L. Restrictions on advertisements, etc.	396
282M. Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies	402
282N. Criminal liability for false or misleading statements	403
282O. Civil liability for false or misleading statements	407
282P. Defences	409
282Q. Document containing offer of units or derivatives of units for sale deemed prospectus	411
282R. Application and moneys to be held in trust in separate bank account until allotment	412
282S. Allotment of units or derivatives of units where prospectus indicates application to list on securities exchange	413

<i>Section</i>	<i>Pages</i>
282T. Prohibition of allotment unless minimum subscription received	416
<i>Subdivision (3) — Exemptions</i>	
282U. Issue or transfer of units or derivatives of units for no consideration	418
282V. Small offers	418
282W. Private placement	426
282X. Offer made under certain circumstances	428
282Y. Offer made to institutional investors	433
282Z. Offer made to accredited investors and certain other persons	433
282ZA. Offer of securities acquired pursuant to section 282Y or 282Z	436
282ZB. Offer made using offer information statement	438
282ZC. Making offer using automated teller machine or electronic means	439
282ZD. Revocation of exemption	440
282ZE. Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act ...	441
<i>Subdivision (4) — Debentures</i>	
282ZF. Applicability of provisions relating to prospectus requirement	441
<i>Division 2 — Collective Investment Schemes</i>	
<i>Subdivision (1) — Interpretation</i>	
283. Interpretation of this Division	441
283A. Use of term “real estate investment trust”	444
284. Code on Collective Investment Schemes	445
284A. Authority may disapply this Division to certain offers and invitations	445
284B. Division not to apply to certain collective investment schemes which are business trusts	446
<i>Subdivision (2) — Authorisation and recognition</i>	
285. Offers of units in collective investment schemes	446
286. Authorised schemes	446

<i>Section</i>	<i>Pages</i>
287. Recognised schemes	449
288. Revocation, suspension or withdrawal of authorisation or recognition	453
289. Approval of trustees	456
290. Inspection of approved trustees	458
291. Duty of trustees to furnish Authority with such return and information as Authority requires	458
292. Liability of trustees	458
293. Authority may issue directions	459
294. Service	459
295. Winding up	460

Subdivision (3) — Prospectus Requirements

296. Requirement for prospectus and profile statement, where relevant	461
297. Stop order for prospectus and profile statement	469
298. Lodging supplementary document or replacement document	472
299. Duration of validity of prospectus and profile statement	475
300. Restrictions on advertisements, etc.	476
301. Issue of units where prospectus indicates application to list on securities exchange	482
302. Application of provisions relating to securities	486

Subdivision (4) — Exemptions

302A. Issue or transfer for no consideration	486
302B. Small offers	487
302C. Private placement	492
303. Offer or invitation made under certain circumstances	494
304. Offer made to institutional investors	494
304A. First sale of units acquired pursuant to section 304	494
305. Offer made to accredited investors and certain other persons	495
305A. First sale of units acquired pursuant to section 305	498
305B. Offer made using offer information statement	499

<i>Section</i>	<i>Pages</i>
305C. Making offer using automated teller machine or electronic means	500
306. Power of Authority to exempt	501
307. Revocation of exemption	502
308. Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act ...	502

Division 3 — Securities Hawking

309. Securities hawking prohibited	502
---	-----

PART XIV

APPEALS

310. Appeals to Minister	504
311. Appeal Advisory Committees	504
312. Disclosure of information	505
313. Regulations for purposes of this Part	505

PART XV

MISCELLANEOUS

314. <i>Prohibition of use of certain titles (Repealed)</i>	506
315. <i>Secrecy (Repealed)</i>	506
316. Opportunity to be heard	506
317. Records	506
318. Size, durability and legibility of records delivered to Authority	507
318A. Translation of instruments	508
319. Supply of magnetic tapes — exclusion of liability for errors or omissions	510
320. Appointment of assistants	510
321. Codes, guidelines, etc., by Authority	510
322. Power of Authority to publish information	512
323. <i>Immunity of Authority and its employees, etc. (Repealed)</i> ...	513
324. Power of court to prohibit payment or transfer of moneys, securities, etc.	513

<i>Section</i>	<i>Pages</i>
325. Power of court to make certain orders	515
326. Injunctions	518
327. Criminal jurisdiction of District Court	520
328. Falsification of records by officer, employee or agent of relevant person	520
329. Duty not to furnish false information to Authority	521
330. Duty not to furnish false statements to securities exchange, futures exchange, designated clearing house and Securities Industry Council	521
331. Corporate offenders and unincorporated associations	523
332. Offences by officers	524
333. Penalties for corporations	525
334. Power of Authority to reprimand for misconduct	525
335. General penalty	526
336. Proceedings with consent of Attorney-General and power to compound offences	527
337. Exemption	527
338. Power to make regulations giving effect to treaty, etc., relating to securities or futures	528
339. Extra-territoriality of Act	528
340. Amendment of Schedules	529
341. Regulations	529
First Schedule — Market	533
Second Schedule — Regulated Activities	535
Third Schedule — Specified Persons	539
Fourth Schedule — Specified Provisions	540
Legislation History	
Comparative Table	

An Act relating to the regulation of activities and institutions in the securities and futures industry, including leveraged foreign exchange trading, and of clearing facilities, and for matters connected therewith.

[Parts I, VIII, IX, X and XV (except section 314),
First and Second Schedules: 1st January 2002
Parts XIII and XIV: 1st July 2002
Parts II to VII, XI and XII, section 314
and Third Schedule: 1st October 2002]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Securities and Futures Act.

Notes:—Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for the convenience of users and are not part of the Act:

Aust. Corporations 2001	: Australia, Corporations Act 2001 (No. 50, 2001)
Aust. FSR Bill 2001	: Australia, Financial Services Reform Bill 2001
ASIC 1989	: Australia, Australian Securities and Investment Commission Act 1989
HK SF Bill	: Hong Kong, Securities and Futures Bill (<i>Gazette</i> published on 24 November 2000, Legal Supplement No. 3)
HK CUTMF	: Hong Kong, Code on Unit Trusts and Mutual Funds
Malaysia SIA	: Malaysia, Securities Industry Act 1983
UK FSMA 2000	: United Kingdom, Financial Services and Markets Act 2000 (Chapter c. 8)
Companies	: Singapore, Companies Act (Chapter 50, 1994 Revised Edition)
E(DM)A	: Singapore, Exchange (Demutualisation and Merger) Act (Chapter 88, 2000 Revised Edition)
FTA	: Singapore, Futures Trading Act (Chapter 116, 1996 Revised Edition — <i>repealed</i>)
Insurance Intermediaries	: Singapore, Insurance Intermediaries Act (Chapter 142A, 2000 Revised Edition — <i>repealed</i>)
SFA	: Singapore, Securities and Futures Act (Chapter 289, 2002 Revised Edition)
SIA	: Singapore, Securities Industry Act (Chapter 289, 1985 Revised Edition — <i>repealed</i>)

Interpretation

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

“advising on corporate finance” has the meaning given to it in the Second Schedule;

“advocate and solicitor” means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);

“approved exchange” means a corporation that is approved by the Authority under section 8 (1) as an approved exchange;

“approved holding company” means a corporation that is approved by the Authority under section 81W as an approved holding company;

“auditor” means a public accountant who is registered or deemed to be registered under the Accountants Act (Cap. 2) and, in Divisions 1 and 1A of Part XIII, when used in relation to an entity not being a company, includes —

(a) a person who is duly registered, licensed, approved or otherwise authorised to practise as an auditor (such practice to include the issue of any opinion, report or other document on the audit of any financial statement) —

(i) under the laws of the place where the entity is formed or constituted; or

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

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

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

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

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

“book” includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

“business rules”, in relation to an approved holding company, a securities exchange, a futures exchange, a recognised market operator or a designated clearing house, means the rules, regulations, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —

(a) the approved holding company, securities exchange, futures exchange, recognised market operator or designated clearing house and its members; and

(b) other persons in relation to it, whether or not those rules, regulations, by-laws or similar body of statements are made by the approved holding company, securities exchange, futures exchange, recognised market operator or designated clearing house or are contained in its constituent documents, but does not include the listing rules of a securities exchange or recognised market operator (which is an overseas securities exchange);

“business trust” has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“capital markets products” means any securities, futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements for the purposes of leveraged foreign exchange trading, and such other products as the Authority may prescribe as capital markets products;

“capital markets services licence” means a licence that is granted by the Authority under section 86 to a person to carry on a business in any regulated activity;

“chairman” means a chairman of a board of directors;

“chief executive officer”, in relation to an approved exchange, a recognised market operator, a designated clearing house, a person operating a clearing facility, an approved holding

company or a holder of a capital markets services licence, means any person, by whatever name described, who is —

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

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

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

“closed-end fund” means an arrangement referred to in paragraph (a) or (b) of the definition of “collective investment scheme” under which units that are issued are exclusively or primarily non-redeemable at the election of the holders of units, but does not include an arrangement referred to in paragraph (a) of that definition —

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

“Code on Collective Investment Schemes” means the Code on Collective Investment Schemes referred to in section 284 which is issued by the Authority under section 321 (1);

“collective investment scheme” means —

- (a) an arrangement in respect of any property —
 - (i) under which —

- (A) the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and
 - (B) the property is managed as a whole by or on behalf of a manager;
- (ii) under which the contributions of the participants and the profits or income from which payments are to be made to them are pooled; and
- (iii) the purpose or effect, or purported purpose or effect, of which is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —
 - (A) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or
 - (B) to receive sums paid out of such profits, income, or other payments or returns; or
- (b) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice published in the *Gazette*,
but does not include —
 - (i) an arrangement operated by a person otherwise than by way of business;
 - (ii) an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;
 - (iii) an arrangement under which each of the participants is a related corporation of the manager;

- (iv) an arrangement made by or on behalf of an entity solely for the benefit of persons, each of whom is —
 - (A) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of that entity or, where that entity is a corporation, a related corporation of that entity; or
 - (B) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (iva) an arrangement made by or on behalf of 2 or more entities solely for the benefit of persons, each of whom is —
 - (A) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of any of those entities or, where any of those entities is a corporation, a related corporation of the entity which is a corporation; or
 - (B) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (v) a franchise;
- (vi) an arrangement under which money received by an advocate and solicitor from his client, whether as a stakeholder or otherwise, acting in his professional capacity in the ordinary course of his practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;
- (vii) an arrangement made by any co-operative society registered under the Co-operative Societies Act (Cap. 62) in accordance with the objects thereof solely for the benefit of its members;

- (viii) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act (Cap. 39);
- (ix) an arrangement arising out of a life policy within the meaning of the Insurance Act (Cap. 142);
- (x) a closed-end fund constituted either as an entity or a trust;
- (xi) (*Deleted by Act 31/2004*)
- (xii) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice published in the *Gazette*;

“commodity”, in relation to a futures contract, means —

- (a) a financial instrument; or
- (b) gold;

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

“connected person”, in relation to —

(a) an individual, means —

- (i) the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; and

- (ii) a firm, a limited liability partnership or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm, limited liability partnership or corporation, whether such control is exercised individually or jointly; or

- (b) a firm, a limited liability partnership or a corporation, means another firm, limited liability partnership or corporation in which the first-mentioned firm, limited liability partnership or corporation has control of not less than 20% of the voting power in that other firm, limited liability partnership or corporation,

and a reference in this Act to a person connected to another person shall be construed accordingly;

“corporation” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

“customer” means —

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

- (i) for the purposes of Parts IV, VI, VII and XV, a person on whose behalf the holder carries on or will carry on any regulated activity; or
- (ii) for the purposes of Part V, a person on whose behalf the holder carries on or will carry on any regulated activity, or any other person with whom the holder, as principal, enters or will enter into transactions —

(A) for the sale or purchase of securities;

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

(C) in connection with leveraged foreign exchange trading,

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

(b) for the purposes of Part III, a person on whose behalf a member of a designated clearing house carries on any activity regulated under this Act, but does not include —

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

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

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

“dealing in securities” has the meaning given to it in the Second Schedule;

“debenture”, except for the purposes of Part XIII, includes any debenture stock, bond, note and any other debt securities issued by a corporation or any other entity, whether

constituting a charge or not, on the assets of the issuer but does not include —

- (a) a cheque, letter of credit, order for the payment of money or bill of exchange; or
- (b) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

“defalcation” means misapplication, including misappropriation, of any property;

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

“designated clearing house” means a person that is designated by the Authority under section 55 (1) as a designated clearing house;

“director” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

“entity” includes a corporation, an unincorporated association, a partnership and the government of any state, but does not include a trust;

“exempt market operator” means —

- (a) a corporation that is exempted under section 14 (2);
- (b) a corporation declared under section 14 (8) to be an exempt market operator; or
- (c) a corporation operating a market included in a class of markets in relation to which a declaration under section 14 (9) is in force;

“exempt person” means a person who is exempted under section 99;

“financial instrument” includes any currency, currency index, interest rate instrument, interest rate index, share, share index, stock, stock index, debenture, bond index, a group or groups of such financial instruments, and such other financial instruments as the Authority may by order prescribe;

“financial year” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

“firm” has the same meaning as in section 2 (1) of the Business Registration Act (Cap. 32);

“foreign company” has the same meaning as in section 4 (1) of the Companies Act;

“foreign exchange trading” has the meaning given to it in the Second Schedule;

“franchise” means a written agreement or arrangement between 2 or more persons by which —

- (a) a party (referred to in this definition as the franchisor) to the agreement or arrangement authorises or permits another party (referred to in this definition as the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;
- (b) the business carried on by the franchisee or the person associated with the franchisee, as the case may be, is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;
- (c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee’s business;
- (d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and
- (e) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

“fund management” has the meaning given to it in the Second Schedule;

“futures contract” means —

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

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

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

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

and includes a futures option transaction; or

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

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

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

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

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

the futures market at which the contract is made,

and includes a futures option transaction; or

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

“futures exchange” means an approved exchange in respect of the operation of its futures market;

“futures market” has the meaning given to it in Part I of the First Schedule;

“futures option transaction” means an option on a specified futures contract which is transacted in accordance with the business rules or practices of a futures exchange, recognised market operator or futures market on which the transaction is made;

“holding company” has the same meaning as in section 5 (4) of the Companies Act (Cap. 50);

“leveraged foreign exchange trading” has the meaning given to it in the Second Schedule;

“licence” means a capital markets services licence or representative’s licence;

“licensed person” means a corporation or an individual holding a licence granted under this Act;

“limited liability partnership” has the same meaning as in section 2 (1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

“listing rules”, in relation to a corporation that establishes or operates, or proposes to establish or operate, a securities market of a securities exchange or a recognised market operator, or an overseas securities exchange that establishes or operates or proposes to establish or operate a securities market of a recognised market operator, means rules governing or relating to —

- (a) the admission to the official list of the corporation or overseas securities exchange, of corporations, governments, bodies unincorporate or other persons for the purpose of the quotation on the securities

market of the corporation or overseas securities exchange of securities issued, or made available by such corporations, governments, bodies unincorporate or other persons, or the removal from that official list and for other purposes; or

- (b) the activities or conduct of corporations, governments, bodies unincorporate and other persons who are admitted to that list,

whether those rules are made —

- (i) by the corporation or overseas securities exchange or are contained in any of the constituent documents of the corporation or overseas securities exchange; or
- (ii) by another person and adopted by the corporation or overseas securities exchange;

“manager”, in relation to a collective investment scheme, means a person, by whatever name called, who is responsible for managing the property of, or operating, the collective investment scheme;

“market” has the meaning given to it in Part I of the First Schedule;

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

“newspaper” has the same meaning as in section 2 of the Newspaper and Printing Presses Act (Cap. 206);

“officer” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“overseas futures exchange” means a person operating a futures market outside Singapore which is regulated by a financial services regulatory authority of a country or territory other than Singapore;

“overseas securities exchange” means a person operating a securities market outside Singapore which is regulated by a financial services regulatory authority of a country or territory other than Singapore;

“participant” means —

- (a) for the purposes of Part II, a person who may participate in one or more of the services provided by an approved exchange, a recognised market operator or an exempt market operator, in its capacity as an approved exchange, a recognised market operator or an exempt market operator, respectively;
- (b) for the purposes of Part III, a person who, under the business rules of a designated clearing house, may participate in one or more of the services provided by the designated clearing house in its capacity as a designated clearing house; or
- (c) for the purposes of any other provision of this Act, a person who participates in a collective investment scheme by way of owning one or more units in a collective investment scheme;

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

“prescribed written law” means this Act or any of the following written laws:

- (a) Banking Act (Cap. 19);
- (b) Finance Companies Act (Cap. 108);
- (c) Financial Advisers Act (Cap. 110);
- (d) Insurance Act (Cap. 142);
- (e) Monetary Authority of Singapore Act (Cap. 186);
- (f) Money-changing and Remittance Businesses Act (Cap. 187); or
- (g) such other written law as the Authority may by order prescribe;

“principal”, in relation to a representative, means a person whom the representative is in the direct employment of, acting for or

by arrangement with, and for whom the representative carries out any regulated activity;

“providing custodial services for securities” has the meaning given to it in the Second Schedule;

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

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

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

“record” means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

“registered business trust” has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“regulated activity” means an activity specified in the Second Schedule;

“related corporation” has the same meaning as in section 4 (1) of the Companies Act;

“representative”, except for the purposes of Part XIII, means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

and includes any officer of a corporation who performs for the corporation any such activity whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“representative’s licence” means a licence that is granted by the Authority under section 87 or a temporary representative’s licence that is granted by the Authority under section 87A;

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

- (a) in the case of a scheme which is constituted as a corporation, the corporation; or
- (b) in the case of a scheme which is not constituted as a corporation, the manager for the scheme;

“securities” means —

- (a) debentures or stocks issued or proposed to be issued by a government;
- (b) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;
- (c) any right, option or derivative in respect of any such debentures, stocks or shares;
- (d) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
 - (i) the value or price of any such debentures, stocks or shares;
 - (ii) the value or price of any group of any such debentures, stocks or shares; or
 - (iii) an index of any such debentures, stocks or shares;
- (e) any unit in a collective investment scheme;
- (f) any unit in a business trust; or
- (g) any derivative of a unit in a business trust,

but does not include —

- (i) futures contracts which are traded on a futures market;
- (ii) bills of exchange;
- (iii) promissory notes; or

- (iv) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere;
- “securities exchange” means an approved exchange in respect of the operation of its securities market;
- “securities financing” has the meaning given to it in the Second Schedule;
- “Securities Industry Council” means the Securities Industry Council referred to in section 138;
- “securities market” has the meaning given to it in Part I of the First Schedule;
- “share” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);
- “subsidiary” has the same meaning as in section 5 of the Companies Act;
- “substantial shareholder” has the same meaning as in Division 4 of Part IV of the Companies Act;
- “substantial shareholding” has the same meaning as in Division 4 of Part IV of the Companies Act;
- “substantial unitholder”, in relation to a collective investment scheme, means a participant who has an interest or interests in units in the scheme representing not less than 5% of the total voting rights of all the participants of the scheme;
- “Take-over Code” means the Singapore Code on Take-overs and Mergers referred to in section 139 which is issued by the Authority under section 321 (1);
- “take-over offer” means —
 - (a) an offer for the acquisition by or on behalf of a person of —
 - (i) in the case of a public company, or of a corporation all or any of the shares of which are listed for quotation on a securities exchange —
 - (A) some or all of the shares, or some or all of the shares of a particular class, in the company or corporation made to all members of the company or corporation, or where the person already holds shares

- in the company or corporation, made to all other members of the company or corporation; or
- (B) all of the remaining shares in the company or corporation made to all other members of the company or corporation as a result of the person acquiring or consolidating effective control of that company or corporation within the meaning of the Take-over Code; or
- (ii) in the case of a registered business trust, or of a business trust all or any of the units of which are listed for quotation on a securities exchange —
 - (A) some or all of the units, or some or all of the units of a particular class, in the business trust made to all unitholders of the business trust, or where the person already holds units in the business trust, made to all other unitholders of the business trust; or
 - (B) all of the remaining units in the business trust made to all other unitholders of the business trust as a result of the person acquiring or consolidating effective control of that business trust within the meaning of the Take-over Code; or
- (b) a proposed compromise or arrangement which —
 - (i) in the case of a public company, is referred to in section 210 of the Companies Act (Cap. 50); or
 - (ii) in the case of a corporation all or any of the shares of which are listed for quotation on a securities exchange, complies with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country or territory in which that corporation was incorporated,and which, if executed, would result in a change in effective control of the public company or corporation within the meaning of the Take-over Code;

“trading in futures contracts” has the meaning given to it in the Second Schedule;

“transaction information” means information relating to —

- (a) offers or invitations to purchase, sell, or exchange securities or futures contracts;
- (b) executed transactions in securities or futures contracts;
or
- (c) transactions cleared or settled by a designated clearing house;

“unit” —

- (a) in relation to a collective investment scheme, means a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; and
- (b) in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“unitholder”, in relation to a business trust, has the same meaning as in section 2 of the Business Trusts Act;

“user”, in relation to an approved exchange or a designated clearing house, means a person who is —

- (a) a member; or
- (b) a customer of a member,
of the approved exchange or designated clearing house;

“user information” means transaction information that is referable to —

- (a) a named user; or
- (b) a group of users, from which the name of a user can be directly inferred;

“voting share” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50).

[16/2003; 5/2004; 31/2004; 1/2005; 5/2005]

(2) Any reference in this Act to the affairs of a corporation shall, unless the contrary intention appears, be construed as including a reference to —

- (a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owned jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;
- (b) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting the generality of paragraph (a)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
- (c) the internal management and proceeding of the corporation;
- (d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —
 - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;
 - (ii) the corporation is under judicial management;
 - (iii) a compromise or arrangement referred to in section 210 of the Companies Act made between the corporation and another person or other persons is being administered; or
 - (iv) the corporation is being wound up,and without limiting the generality of sub-paragraphs (i) to (iv), any conduct of such a receiver or such a receiver and manager, or such a judicial manager, or any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;
- (e) the ownership of shares in, debentures of, units of shares in, units of debentures of, and units in a collective investment scheme issued by the corporation;

- (f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;
- (g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially to influence the policy of the corporation;
- (h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, units of shares in, units of debentures of, or units in a collective investment scheme issued by, the corporation;
- (i) where the corporation has issued units in a collective investment scheme, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the units in a collective investment scheme relate; or
- (j) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in paragraphs (a) to (i).

(3) Where the name of a corporation referred to in this Act is changed pursuant to the Companies Act (Cap. 50), the change of name shall not affect the identity of that corporation or the application of the relevant provisions of this Act or any other written law to that corporation.

[SIA, s. 2; FTA, s. 2; Companies, s. 4 & s. 107; UK FSMA 2000, s. 235; Aust. Corporations 2001, s. 9]

Associated person

3.—(1) Unless the context otherwise requires, any reference in this Act to a person associated with another person shall be construed as a reference to —

- (a) where the other person is a corporation —
 - (i) a director or secretary of the corporation;
 - (ii) a related corporation; or
 - (iii) a director or secretary of such a related corporation;

- (b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal, or express or implied —
- (i) by reason of which either of those persons may exercise, directly or indirectly, control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or
 - (iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them,
- except that, in relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person;
- (c) a person with whom the other person is acting, or proposes to act, in concert in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —
- (i) subject to subsection (2), a person who is a director of a corporation of which the other person is a director; or
 - (ii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is, according to any subsidiary legislation made under this Act, to be regarded as associated in respect of the matter to which the reference relates;

- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as referred to in paragraph (a), (b), (c), (d), (e) or (f), that last-mentioned person.

(2) Where, in any proceedings under this Act, it is alleged that a person referred to in subsection (1) (d) (i) was associated with another person at a particular time, that the first-mentioned person shall not be considered to be so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be taken to be associated with another person by virtue of subsection (1) (b), (c), (e) or (f) by reason only of one or more of the following:

- (a) that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;
- (b) that one of those persons, a customer, gives specific instructions to the other, whose ordinary business includes dealing in securities, trading in futures contracts or leveraged foreign exchange trading, to acquire shares on the customer's behalf in the ordinary course of that business;
- (c) that one of those persons has sent, or proposes to send, to the other a take-over offer, or has made, or proposes to make, offers under a take-over announcement, within the meaning of the Take-over Code, in relation to shares held by the other;
- (d) that one of those persons has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

Interest in securities

4.—(1) Subject to this section, a person has an interest in securities if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those securities.

(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities is, or is capable of being made, subject to restraint or restriction.

(3) Where any property held in trust consists of or includes securities and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he shall be deemed to have an interest in those securities.

(4) Where a corporation has, or is by the provisions of this section deemed to have, an interest in a security and —

(a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person; or

(b) a person has a controlling interest in the corporation,
that person shall be deemed to have an interest in that security.

(5) Where a corporation has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a security and —

(a) a person is;

(b) the associates of a person are; or

(c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation, that person shall be deemed to have an interest in that security.

(6) For the purposes of subsection (5), a person is an associate of another person if the first-mentioned person is —

(a) a related corporation of the second-mentioned person;

(b) a person in accordance with whose directions, instructions or wishes that the second-mentioned person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (4);

- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security;
 - (d) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or
 - (e) a corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the second-mentioned person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.
- (7) A person shall be deemed to have an interest in a security in any one or more of the following circumstances:
- (a) where he has entered into a contract to purchase a security;
 - (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
 - (c) where he has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
 - (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.
- (8) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (9) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.
- (10) There shall be disregarded —
- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;

- (b) an interest in a security if the interest is that of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
 - (c) an interest of a person in a security if that interest is an interest held by him by reason of his holding a prescribed office;
 - (d) an interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act (Cap. 50); and
 - (e) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as may be prescribed.
- (11) An interest in a security shall not be disregarded by reason only of —
- (a) its remoteness;
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

[SIA, s. 4; Companies, s. 7 (4A); HK Securities Ordinance, s. 5]

Specific classes of investors

4A.—(1) Subject to subsection (2), unless the context otherwise requires —

- (a) “accredited investor” means —
 - (i) an individual —
 - (A) whose net personal assets exceed in value \$2 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount; or
 - (B) whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;
 - (ii) a corporation with net assets exceeding \$10 million in value (or its equivalent in a foreign currency) or

such other amount as the Authority may prescribe, in place of the first amount, as determined by —

- (A) the most recent audited balance-sheet of the corporation; or
 - (B) where the corporation is not required to prepare audited accounts regularly, a balance-sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance-sheet, which date shall be within the preceding 12 months;
- (iii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
- (iv) such other person as the Authority may prescribe;
- (b) “expert investor” means —
- (i) a person whose business involves the acquisition and disposal, or the holding, of capital markets products, whether as principal or agent;
 - (ii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
 - (iii) such other person as the Authority may prescribe;
- (c) “institutional investor” means —
- (i) a bank that is licensed under the Banking Act (Cap. 19);
 - (ii) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
 - (iii) a finance company that is licensed under the Finance Companies Act (Cap. 108);
 - (iv) a company or society registered under the Insurance Act (Cap. 142) as an insurer;
 - (v) a company licensed under the Trust Companies Act 2005 (Act 11 of 2005);
 - (vi) the Government;
 - (vii) a statutory body established under any Act;
 - (viii) a pension fund or collective investment scheme;

- (ix) the holder of a capital markets services licence for —
 - (A) dealing in securities;
 - (B) fund management;
 - (C) providing custodial services for securities;
 - (D) securities financing; or
 - (E) trading in futures contracts;
- (x) a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors;
- (xi) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
- (xii) such other person as the Authority may prescribe.

[1/2005; 11/2005]

(2) The definitions in subsection (1) may be subject to such modifications as the Authority may prescribe for any specified provision of this Act.

[1/2005]

PART II

MARKETS

Objectives of this Part

5. The objectives of this Part are —
- (a) to promote fair, orderly and transparent markets;
 - (b) to facilitate efficient markets for the allocation of capital and the transfer of risks; and
 - (c) to reduce systemic risk.

[1/2005]

Division 1 — Establishment of Markets

Requirement for approval or recognition

6.—(1) No person shall establish or operate a market, or hold himself out as operating a market, unless the person is —

- (a) an approved exchange; or
- (b) a recognised market operator.

[1/2005]

(2) No person shall hold himself out —

- (a) as an approved exchange unless he is an approved exchange;
or
- (b) as a recognised market operator unless he is a recognised market operator.

[1/2005]

(3) Except with the written approval of the Authority, no person other than an approved exchange shall take or use, or have attached to or exhibited at any place —

- (a) the title or description “securities exchange”, “stock exchange”, “futures exchange” or “derivatives exchange” in any language; or
- (b) any title or description which resembles a title or description referred to in paragraph (a).

[1/2005]

(4) 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 \$250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

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

[1/2005]

*Subdivision (1) — Approved exchange and
recognised market operator*

Application for approval or recognition

7.—(1) A corporation may apply to the Authority to be —

- (a) approved as an approved exchange; or
- (b) recognised as a recognised market operator.

[1/2005]

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

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

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

[1/2005]

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

[1/2005]

Power of Authority to approve exchanges and recognise market operators

8.—(1) Where —

- (a) a corporation has made an application under section 7 (1) (a);
- (b) a corporation which is a recognised market operator has made an application under section 11 (1) to change its status to that of an approved exchange; or
- (c) the Authority has conducted a review under section 11 (5) and has determined that a corporation would be more appropriately regulated as an approved exchange,

the Authority may approve the corporation as an approved exchange.

[1/2005]

(2) Where —

- (a) a corporation has made an application under section 7 (1) (b);
- (b) a corporation which is an approved exchange has made an application under section 11 (1) to change its status to that of a recognised market operator; or
- (c) the Authority has conducted a review under section 11 (5) and has determined that a corporation would be more appropriately regulated as a recognised market operator,

the Authority may recognise the corporation as a recognised market operator.

[1/2005]

(3) Notwithstanding subsections (1) and (2), the Authority may, with the consent of the applicant —

- (a) treat an application under section 7 (1) (a) as an application under section 7 (1) (b) if it is of the opinion that the applicant would be more appropriately regulated as a recognised market operator; or

- (b) treat an application under section 7 (1) (b) as an application under section 7 (1) (a) if it is of the opinion that the applicant would be more appropriately regulated as an approved exchange.

[1/2005]

(4) The Authority may approve a corporation as an approved exchange under subsection (1) or recognise a corporation as a recognised market operator under subsection (2) subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing, including conditions or restrictions relating to —

- (a) the activities that the corporation may undertake;
- (b) the securities or futures contracts that may be traded on any market established or operated by the corporation; and
- (c) the nature of the investors or participants who may use, invest in or participate in the securities or futures contracts traded on any market established or operated by the corporation.

[1/2005]

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

[1/2005]

(6) An approved exchange or a recognised market operator shall, for the duration of the approval or recognition, satisfy all conditions and restrictions that may be imposed on it under subsections (4) and (5).

[1/2005]

(7) The Authority may refuse to approve a corporation as an approved exchange or recognise a corporation as a recognised market operator if —

- (a) the corporation has not provided the Authority with such information relating to —
 - (i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business; or
 - (ii) any circumstances likely to affect the corporation's manner of conducting business,as the Authority may require;
- (b) any information or document provided by the corporation to the Authority is false or misleading;

- (c) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) 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 corporation or a substantial shareholder of the corporation;
- (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder, as the case may be, being a compromise or scheme of arrangement that is still in operation;
- (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
 - (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 the corporation, shareholder or officer, as the case may be, had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (h) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any market;
- (i) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability

of the corporation or its officers, employees or substantial shareholders;

- (k) the Authority is not satisfied as to —
 - (i) the financial standing of the corporation or any of its substantial shareholders; or
 - (ii) the manner in which the business of the corporation is to be conducted;
- (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business which the corporation may carry on in connection with the establishment or operation of any market;
- (m) there are other circumstances which are likely to —
 - (i) lead to the improper conduct of business by the corporation or any of its officers, employees or substantial shareholders; or
 - (ii) reflect discredit on the manner of conducting the business of the corporation or any of its substantial shareholders;
- (n) in the case of any market that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a fair, orderly and transparent market;
- (o) the corporation does not satisfy the criteria prescribed under section 9 to be approved as an approved exchange or recognised as a recognised market operator, as the case may be; or
- (p) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

[1/2005]

(8) Subject to subsection (9), the Authority shall not refuse to approve a corporation as an approved exchange or recognise a corporation as a recognised market operator under subsection (7) without giving the corporation an opportunity to be heard.

[1/2005]

(9) The Authority may refuse to approve a corporation as an approved exchange or recognise a corporation as a recognised market

operator on any of the following grounds without giving the corporation an opportunity to be heard:

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

[1/2005]

(10) The Authority shall give notice in the *Gazette* of any corporation approved as an approved exchange under subsection (1) or recognised as a recognised market operator under subsection (2), and such notice may include the conditions or restrictions imposed by the Authority on the corporation under subsection (4) (b) in relation to the securities or futures contracts that may be traded on any market established or operated by the corporation.

[1/2005]

(11) Any applicant who is aggrieved by a refusal of the Authority to grant an approval under subsection (1) or a recognition under subsection (2) may, within 30 days after the applicant is notified of the decision, appeal to the Minister whose decision shall be final.

[1/2005]

(12) Any approved exchange or recognised market operator which 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.

[1/2005]

[SIA, s. 16; FTA, s. 4; UK FSMA 2000, s. 289 (1) & (2)]

General criteria to be taken into account by Authority

9.—(1) The Authority may prescribe the criteria which it may take into account for the purposes of deciding —

- (a) whether an applicant referred to in section 7 (1) or 11 (1) should be approved as an approved exchange or recognised as a recognised market operator;

- (b) whether an approved exchange or a recognised market operator that is subject to a review by the Authority under section 11 (5) should be approved as an approved exchange or recognised as a recognised market operator; and
- (c) the conditions or restrictions that the Authority may impose under section 8 (4) or (5).

[1/2005]

(2) Without prejudice to section 8 and subsection (1), the Authority may, for the purposes of recognising an operator of an overseas market as a recognised market operator under section 8 (2), have regard, in addition to any criteria prescribed under subsection (1), to —

- (a) whether adequate arrangements exist for co-operation between the Authority and the financial services regulatory authority responsible for the supervision of the operator in the country or territory in which the head office or principal place of business of the operator is situated; and
- (b) whether the operator is, in the country or territory in which the head office or principal place of business of the operator is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 5 are achieved, to the requirements and supervision to which approved exchanges and recognised market operators are subject under this Act.

[1/2005]

(3) In considering whether it is satisfied that the operator of an overseas market has met the requirements mentioned in subsection (2), the Authority may have regard to —

- (a) the relevant laws and practices of the country or territory in which the head office or principal place of business of the operator is situated; and
- (b) the rules and practices of the operator.

[1/2005]

(4) In this section, “operator of an overseas market” means a person whose head office is situated in a country or territory outside Singapore, and who is authorised to operate a market by a financial services regulatory authority of —

- (a) that country or territory; or
- (b) the country or territory in which the principal place of business of that person is situated.

[1/2005]

Annual fees payable by approved exchange and recognised market operator

10.—(1) Every approved exchange and recognised market operator shall pay to the Authority such annual fees as may be prescribed in such manner as may be specified by the Authority.

[1/2005]

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

[1/2005]

Change in status

11.—(1) A corporation which is an approved exchange or a recognised market operator may apply to the Authority to change its status in the manner referred to in subsection (6).

[1/2005]

(2) An application under subsection (1) shall be made in such form and manner as the Authority may prescribe.

[1/2005]

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

[1/2005]

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

[1/2005]

(5) The Authority may, from time to time, on its own initiative, review the status of a corporation that is an approved exchange or a recognised market operator under this Part in accordance with the criteria prescribed under section 9.

[1/2005]

(6) Where an application is made by a corporation under subsection (1) or where a review of the status of a corporation is conducted by the Authority under subsection (5), the Authority may —

(a) where the corporation is an approved exchange, withdraw the approval as such and recognise the corporation as a recognised market operator under section 8 (2);

(b) where the corporation is a recognised market operator, withdraw the recognition as such and approve the corporation as an approved exchange under section 8 (1); or

- (c) make no change to the status of the corporation as an approved exchange or a recognised market operator.

[1/2005]

(7) Where an application is made under subsection (1), the Authority shall not exercise its power under subsection (6) (c) without giving the corporation an opportunity to be heard.

[1/2005]

(8) Where a review of the status of a corporation is conducted by the Authority on its own initiative under subsection (5), the Authority shall not exercise its powers under subsection (6) (a) or (b) without giving the corporation an opportunity to be heard.

[1/2005]

(9) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation after a review under subsection (5) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision shall be final.

[1/2005]

Cancellation of approval or recognition

12.—(1) An approved exchange or a recognised market operator which intends to cease operating its market or, where it operates more than one market, all of its markets, may apply to the Authority to cancel its approval as an approved exchange or recognition as a recognised market operator, as the case may be.

[1/2005]

(2) The Authority may cancel the approval or recognition if it is satisfied that the approved exchange or recognised market operator referred to in subsection (1) has ceased operating its market or all of its markets, as the case may be.

[1/2005]

[FTA, s. 7]

Power of Authority to revoke approval and recognition

13.—(1) The Authority may revoke any approval of a corporation as an approved exchange under section 8 (1) or any recognition of a corporation as a recognised market operator under section 8 (2) if —

- (a) there exists a ground under section 8 (7) on which the Authority may refuse an application;
- (b) the corporation does not commence operating its market or, where it operates more than one market, all of its markets, within 12 months from the date on which it was granted

the approval under section 8 (1) or recognition under section 8 (2), as the case may be;

- (c) the corporation ceases to operate its market or, where it operates more than one market, all of its markets;
- (d) the corporation contravenes —
 - (i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;
 - (ii) any direction issued to it by the Authority under this Act; or
 - (iii) any provision in this Act;
- (e) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or
- (f) any information or document provided by the corporation to the Authority is false or misleading.

[1/2005]

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any approval under section 8 (1) or recognition under section 8 (2) that was granted to a corporation without giving the corporation an opportunity to be heard.

[1/2005]

(3) The Authority may revoke an approval under section 8 (1) or a recognition under section 8 (2) that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

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

[1/2005]

(4) For the purposes of subsection (1) (c), a corporation shall be deemed to have ceased to operate its market if —

- (a) it has ceased to operate the market for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or

- (b) it has ceased to operate the market under a direction issued by the Authority under section 46.

[1/2005]

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

[1/2005]

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

[1/2005]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(8) Any revocation of approval or recognition of a corporation referred to in subsection (1) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on a market operated by the corporation, whether the agreement, transaction or arrangement was entered into before or after the revocation of the approval or recognition; or

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

[1/2005]

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

[1/2005]

[UK FSMA, s. 297; FTA, s. 7]

Subdivision (2) — Exempt market operator

Power of Authority to exempt corporations from approval or recognition

14.—(1) A corporation that wishes to establish or operate a market may apply to the Authority, in such form and manner as the Authority may prescribe, to be exempted from the requirement under section 6 (1) to be an approved exchange or a recognised market operator.

[1/2005]

(2) The Authority may exempt a corporation referred to in subsection (1) from the requirement under section 6 (1) if, in the opinion of the Authority, the objectives specified in section 5 can be achieved without regulating the corporation as an approved exchange or a recognised market operator.

[1/2005]

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

[1/2005]

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

[1/2005]

(5) The Authority may, by notice in writing, impose on a corporation exempted under subsection (2) such conditions or restrictions relating to the exemption as the Authority may think fit, including conditions or restrictions relating to —

- (a) the activities that the corporation may undertake;
- (b) the securities or futures contracts that may be traded on any market established or operated by the corporation; and
- (c) the nature of the investors or participants who may use, participate or invest in the securities or futures contracts traded on any market established or operated by the corporation.

[1/2005]

(6) The Authority may, at any time, by notice in writing to a corporation exempted under subsection (2), vary any condition or restriction referred to in subsection (5) or impose such further condition or restriction relating to the exemption as the Authority may think fit.

[1/2005]

(7) The Authority shall give notice in the *Gazette* of any corporation exempted under subsection (2), and such notice may include the conditions or restrictions imposed by the Authority on the corporation under subsection (5) (b) in relation to the securities or futures contracts that may be traded on any market established or operated by the corporation.

[1/2005]

(8) The Authority may —

- (a) exempt any corporation operating any market from the requirement under section 6 (1) to be an approved exchange or a recognised market operator;
- (b) by order published in the *Gazette*, declare that corporation to be an exempt market operator; and
- (c) by notice in writing to that corporation, impose such conditions or restrictions relating to the exemption as the Authority may think fit.

[1/2005]

(9) The Authority may —

- (a) exempt corporations operating any class of markets from the requirement under section 6 (1) to be approved exchanges or recognised market operators, subject to such conditions or restrictions as the Authority may think fit to impose by regulations; and
- (b) by order published in the *Gazette*, declare such corporations to be exempt market operators.

[1/2005]

(10) An exempt market operator shall comply with all conditions or restrictions imposed on it under subsection (5), (6) or (8), as the case may be.

[1/2005]

(11) Any corporation which contravenes subsection (10) 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.

[1/2005]

Power of Authority to revoke exemption

15.—(1) The Authority may revoke any exemption granted to a corporation under section 14 (2), (8) or (9) if —

- (a) the corporation does not commence operating its market or, where it operates more than one market, all of its markets, within 12 months from the date on which it was granted the exemption;
- (b) the corporation ceases to operate its market or, where it operates more than one market, all of its markets;
- (c) the corporation contravenes —
 - (i) any condition or restriction relating to the exemption;

- (ii) any direction issued to it by the Authority under this Act; or
- (iii) any provision in this Act;
- (d) the Authority is of the opinion that the corporation has operated in a manner that is contrary to the interests of the public;
- (e) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (f) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (g) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;
- (h) the Authority is of the opinion that the corporation would be more appropriately regulated as an approved exchange or a recognised market operator; or
- (i) any information or document provided by the corporation to the Authority is false or misleading.

[1/2005]

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any exemption granted to a corporation without giving the corporation an opportunity to be heard.

[1/2005]

(3) The Authority may revoke an exemption granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

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

[1/2005]

(4) For the purposes of subsection (1) (b), a corporation shall be deemed to have ceased to operate its market if —

- (a) it has ceased to operate the market for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or
- (b) it has ceased to operate the market under a direction issued by the Authority under section 46.

[1/2005]

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

[1/2005]

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

[1/2005]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(8) Any revocation under subsection (1) of an exemption granted to a corporation shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on a market operated by the corporation, whether the agreement, transaction or arrangement was entered into before or after the revocation of the exemption; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[1/2005]

(9) The Authority shall give notice in the *Gazette* of any revocation of an exemption referred to in subsection (1).

[1/2005]

Division 2 — Regulation of Approved Exchanges

Subdivision (1) — Obligations of approved exchanges

General obligations

16.—(1) An approved exchange shall, in respect of every market it operates —

- (a) as far as is reasonably practicable, ensure that the market is fair, orderly and transparent;
- (b) manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) ensure that access for participation in its facilities is subject to criteria that are fair and objective, and that are designed to ensure the orderly functioning of the market and to protect the interests of the investing public;
- (e) maintain business rules and, where appropriate, listing rules that make satisfactory provision for —
 - (i) a fair, orderly and transparent market in securities or futures contracts that are traded through its facilities; and
 - (ii) the proper regulation and supervision of its members;
- (f) enforce compliance with its business rules and, where appropriate, its listing rules;
- (g) have sufficient financial, human and system resources —
 - (i) to operate a fair, orderly and transparent market;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements; and
- (h) ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

[1/2005]

(2) In subsection (1) (g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[1/2005]

Obligation to notify Authority of certain matters

17.—(1) An approved exchange shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) any material change to the information provided by the approved exchange in its application under section 7 (1) or 11 (1);

- (b) the carrying on of any business by the approved exchange other than —
 - (i) the business of operating a market;
 - (ii) a business incidental to operating a market; or
 - (iii) such business or class of businesses as the Authority may prescribe;
- (c) the acquisition by the approved exchange of a substantial shareholding in a corporation which does not carry on —
 - (i) the business of operating a market;
 - (ii) a business incidental to operating a market; or
 - (iii) such business or class of businesses as the Authority may prescribe;
- (d) the approved exchange becoming aware of a financial irregularity or other matter which in its opinion —
 - (i) may affect its ability to discharge its financial obligations; or
 - (ii) may affect the ability of a member of the approved exchange to meet its financial obligations to the approved exchange;
- (e) the approved exchange reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved exchange;
- (f) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the approved exchange.

[1/2005]

(2) Without prejudice to the generality of section 46 (1), the Authority may, at any time after receiving a notification referred to in subsection (1), issue directions to the approved exchange —

- (a) where the notification relates to a matter referred to in subsection (1) (b) —
 - (i) to cease carrying on the first-mentioned business referred to in subsection (1) (b); or
 - (ii) to carry on the first-mentioned business referred to in subsection (1) (b) subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46 (1); or

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

- (i) to dispose of the shareholding referred to in subsection (1) (c); or
- (ii) to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46 (1),

and the approved exchange shall comply with such directions.

[1/2005]

Obligation to maintain proper records

18. An approved exchange shall maintain a record of all transactions effected through its facilities in such form and manner as the Authority may prescribe, including —

- (a) the extent to which the record includes details of each transaction; and
- (b) the period of time that the record is to be maintained.

[1/2005]

Obligation to submit periodic reports

19. An approved exchange shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

Obligation to assist Authority

20. An approved exchange shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of —

- (a) such books and other information —
 - (i) relating to the business of the approved exchange; or
 - (ii) in respect of such dealings in securities or trading in futures contracts; and
- (b) such other information,

as the Authority may require for the proper administration of this Act.

[1/2005]

Obligation to maintain confidentiality

21.—(1) Subject to subsection (2), an approved exchange and its officers and employees shall maintain, and aid in maintaining, the confidentiality of all user information that —

- (a) comes to the knowledge of the approved exchange or any of its officers or employees; or
- (b) is in the possession of the approved exchange or any of its officers or employees.

[1/2005]

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

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or furnished; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[1/2005]

(3) For the avoidance of doubt, nothing in this section shall be construed as preventing an approved exchange from entering into a written agreement with a user which obliges the approved exchange to maintain a higher degree of confidentiality than that specified in this section.

[1/2005]

Penalties under this Subdivision

22. Any approved exchange which contravenes section 16 (1), 17, 18, 19, 20 or 21 (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.

[1/2005]

*Subdivision (2) — Rules of approved exchanges***Business rules and listing rules of approved exchanges**

23.—(1) Without limiting the generality of sections 16 and 45 —

- (a) the Authority may prescribe the matters that an approved exchange shall make provision for in the business rules or listing rules of the approved exchange; and

- (b) the approved exchange shall make provision for those matters in its business rules or listing rules, as the case may be.

[1/2005]

(2) An approved exchange shall not make any amendment to its business rules or listing rules unless it complies with such requirements as the Authority may prescribe.

[1/2005]

(3) In this Subdivision, any reference to an amendment to a business rule or listing rule shall be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under, the business rule or listing rule, as the case may be, whether the change is made by an alteration to the text of the rule or by any other notice issued by or on behalf of the approved exchange.

[1/2005]

(4) Any approved exchange which contravenes subsection (1) or (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.

[1/2005]

Business rules of approved exchanges have effect as contract

24.—(1) The business rules of an approved exchange shall be deemed to be, and shall operate as, a binding contract —

- (a) between the approved exchange and each member; and
(b) between each member and every other member.

[1/2005]

(2) The approved exchange and each member shall be deemed to have agreed to observe and perform the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the approved exchange or that member, as the case may be.

[1/2005]

[Aust. Corporations 2001, s. 772A]

Power of court to order observance or enforcement of business rules or listing rules

25.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules or listing rules of an approved exchange fails to do so, the High Court may, on the application of the Authority, an approved exchange or

a person aggrieved by the failure, and after giving the first-mentioned person an opportunity to be heard, make an order directing the first-mentioned person to comply with, observe, enforce or give effect to those business rules or listing rules.

[1/2005]

(2) A person against whom an order under subsection (1) may be made shall be —

(a) a corporation which —

- (i) has been admitted to the official list of an approved exchange; and
- (ii) has not been removed from that official list;

(b) a person associated with a corporation which —

- (i) has been admitted to the official list of an approved exchange; and
- (ii) has not been removed from that official list,
to the extent to which the business rules or listing rules purport to apply to him; or

(c) an approved exchange.

[1/2005]

(3) This section is in addition to, and not in derogation of, any other remedy available to an aggrieved person referred to in subsection (1).

[1/2005]

[SIA, s. 20; FTA, s. 10]

Non-compliance with business rules or listing rules not to substantially affect rights of person

26. Any failure by an approved exchange to comply with —

- (a) this Act;
- (b) its business rules; or
- (c) where applicable, its listing rules,

in relation to a matter shall not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules or listing rules.

[1/2005]

*Subdivision (3) — Matters requiring
approval of Authority*

Control of substantial shareholding in approved exchanges

27.—(1) No person shall enter into any agreement to acquire shares in an approved exchange by virtue of which he would, if the agreement had been carried out, become a substantial shareholder of the approved exchange without first obtaining the approval of the Authority to enter into the agreement.

[1/2005]

(2) No person shall become —

(a) a 12% controller; or

(b) a 20% controller,

of an approved exchange without first obtaining the approval of the Authority.

[1/2005]

(3) In subsection (2) —

“12% controller” means a person, not being a 20% controller, who alone or together with his associates —

(a) holds not less than 12% of the shares in the approved exchange; or

(b) is in a position to control not less than 12% of the votes in the approved exchange;

“20% controller” means a person who, alone or together with his associates —

(a) holds not less than 20% of the shares in the approved exchange; or

(b) is in a position to control not less than 20% of the votes in the approved exchange.

[1/2005]

(4) In this section —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section 7 (6) to (10) of the Companies Act (Cap. 50);
or

(ii) he otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7 (6) to (10) of the Companies Act;

- (b) a reference to the control of a percentage of the votes in an approved exchange shall be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the approved exchange; and
- (c) a person, *A*, is an associate of another person, *B*, if —
 - (i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of *B*;
 - (ii) *A* is a corporation 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 *B* or, where *B* is a corporation, of the directors of *B*;
 - (iii) *B* is a corporation 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 *A* or, where *A* is a corporation, of the directors of *A*;
 - (iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;
 - (v) *B* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *A*;
 - (vi) *A* is a related corporation of *B*;
 - (vii) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *A*;
 - (viii) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *B*; or
 - (ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to

the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved exchange.

[1/2005]

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

[1/2005]

(6) Without prejudice to subsection (11), the Authority may, for the purposes of securing compliance with subsection (1) or (2), or any condition or restriction imposed under subsection (5), by notice in writing, direct the transfer or disposal of all or any of the shares of an approved exchange in which a substantial shareholder, 12% controller or 20% controller of the approved exchange has an interest.

[1/2005]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association or other constituent document or documents of the approved exchange —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the approved exchange shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the approved exchange, the approved exchange shall not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

[1/2005]

(8) Any issue of shares by an approved exchange in contravention of subsection (7) (b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (6) shall immediately return those shares to the approved exchange, upon which the approved exchange shall return to the person any payment received from him in respect of those shares.

[1/2005]

(9) Any payment made by an approved exchange in contravention of subsection (7) (c) shall be deemed to be null and void, and a person

to whom a direction has been issued under subsection (6) shall immediately return the payment he has received to the approved exchange.

[1/2005]

(10) The Authority may exempt —

(a) any person or class of persons; or

(b) any class or description of shares or interests in shares, from the requirement under subsection (1) or (2), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(11) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), 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.

[1/2005]

(12) Any person who contravenes subsection (7) (b) or (c), (8) or (9) or any direction issued by the Authority under 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.

[1/2005]

[E (DM) A, s. 15]

Approval of chairman, chief executive officer, director and key persons

28.—(1) No approved exchange shall appoint a person as its chairman, chief executive officer or director unless the approved exchange has obtained the approval of the Authority.

[1/2005]

(2) The Authority may, by notice in writing, require an approved exchange to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved exchange and the approved exchange shall comply with the notice.

[1/2005]

(3) An application for approval under subsection (1) or (2) shall be made in such form and manner as the Authority may prescribe.

[1/2005]

(4) Without prejudice to the generality of section 45 and to any other matter that the Authority may consider relevant, the Authority

may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

[1/2005]

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the approved exchange an opportunity to be heard.

[1/2005]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the approved exchange an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

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

[1/2005]

(8) An approved exchange shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairman, chief executive officer, director or person referred to in the notice issued by the Authority under subsection (2).

[1/2005]

(9) Without prejudice to the generality of section 45, the Authority may make regulations relating to the composition and duties of the board of directors or any committee of an approved exchange.

[1/2005]

(10) In this section, “committee” includes any committee of directors, disciplinary committee, appeals committee or any body responsible for disciplinary action against a member of an approved exchange.

[1/2005]

(11) The Authority may exempt any approved exchange or class of approved exchanges from the requirement under subsection (1)

or (8), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(12) Any approved exchange which contravenes subsection (1), (2) or (8) 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.

[1/2005]

Power of Authority to approve instruments, contracts and transactions

29.—(1) No approved exchange shall, without the approval of the Authority, list, de-list or permit the trading of —

- (a) any futures contract;
- (b) any right, option or derivative in respect of any debentures, stocks or shares;
- (c) any right under a contract for differences or under any other contract the purpose or purported purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
 - (i) the value or price of any debentures, stocks or shares;
 - (ii) the value or price of any group of debentures, stocks or shares; or
 - (iii) an index of any debentures, stocks or shares; or
- (d) such other instrument, contract or transaction, or class of instruments, contracts or transactions as the Authority may prescribe,

on any market operated by the approved exchange.

[1/2005]

(2) The Authority may grant approval for an approved exchange to list, de-list or permit the trading of any instrument, contract or transaction, or any class of instruments, contracts or transactions, referred to in subsection (1), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the approved exchange.

[1/2005]

(3) Any approved exchange which contravenes subsection (1) or any of the conditions or restrictions imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to

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

[1/2005]

Listing of approved exchanges on securities market

30.—(1) The securities of an approved exchange shall not be listed for quotation on a securities market that is operated by the approved exchange or any of its related corporations unless the approved exchange and the operator of the securities market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of the trading of the securities of the approved exchange on the securities market.

[1/2005]

(2) Where the securities of an approved exchange are listed for quotation on a securities market operated by the approved exchange or any of its related corporations, the listing rules of the securities market shall be deemed to allow the Authority to act in place of the operator of the securities market in making decisions and taking action, or to require the operator of the securities market to make decisions and to take action on behalf of the Authority, on —

- (a) the admission or removal of the approved exchange to or from the official list of the securities market; and
- (b) granting approval for the securities of the approved exchange to be, or stopping or suspending the securities of the approved exchange from being, listed for quotation or quoted on the securities market.

[1/2005]

(3) The Authority may, by notice in writing to the operator of the securities market —

- (a) modify the listing rules of the securities market for the purpose of their application to the listing for quotation or trading of the securities of the approved exchange; or
- (b) waive the application of any listing rule of the securities market to the approved exchange.

[1/2005]

(4) Any 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.

[1/2005]

Subdivision (4) — Powers of Authority

Fixing of position and trading limits in futures contracts

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

- (a) in the case of the establishing and fixing of limits by the Authority, any approved exchange; or
- (b) in the case of the establishing and fixing of limits by an approved exchange, that approved exchange.

[1/2005]

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

[1/2005]

(3) Such limits upon positions and trading shall apply to positions held by, and trading done by, 2 or more persons acting pursuant to an express or implied agreement or understanding as if the positions were held by, or the trading was done by, a single person.

[1/2005]

(4) This section shall not apply to positions as defined by an approved exchange in accordance with such regulations as may be prescribed.

[1/2005]

(5) No person shall, directly or indirectly —

- (a) buy or sell, or agree to buy or sell, under a futures contract traded on the futures market of, or subject to the business rules of, an approved exchange, any amount of a commodity in excess of the trading limits fixed for one business day, or any other stated period set by the Authority or the approved exchange; or

- (b) hold or control a net buy or sell position under a futures contract traded on the futures market of, or subject to the business rules of, an approved exchange in excess of any position limit fixed by the Authority or the approved exchange.

[1/2005]

(6) Nothing in this section shall preclude the Authority, or an approved exchange with the approval of the Authority, from —

- (a) establishing or fixing different trading or position limits for different futures contracts, for different delivery months or for different days remaining until the last day of trading in a futures contract;
- (b) fixing different limits for the purposes of subsection (5); or
- (c) excluding transactions from the limits established or fixed under this section.

[1/2005]

[FTA, s. 42]

Power of Authority in securities market

32.—(1) Without prejudice to the generality of section 46, where the Authority is of the opinion that it is necessary to prohibit trading in —

- (a) particular securities of, or made available by, an entity;
- (b) particular units or derivatives of units in a business trust; or
- (c) particular units of a collective investment scheme,

on a securities market of an approved exchange —

- (i) in order to protect persons buying or selling the securities, units or derivatives of units in a business trust or units in a collective investment scheme; or
- (ii) in the interests of the public,

the Authority may give notice in writing to the approved exchange stating that it is of that opinion and setting out the reasons for its opinion.

[1/2005]

(2) If, after the receipt of the notice given under subsection (1), the approved exchange fails to take any action in relation to those securities, units or derivatives of units in a business trust or units in a collective investment scheme on that securities market and the Authority continues to be of the opinion that it is necessary to prohibit trading in those securities, units or derivatives of units in

a business trust or units in a collective investment scheme on that securities market, the Authority may, by notice in writing to the approved exchange, prohibit trading in those securities, units or derivatives of units in a business trust or units in a collective investment scheme on that securities market for such period, not exceeding 14 days, as is specified in the notice.

[1/2005]

(3) Where the Authority gives a notice to an approved exchange under subsection (2), the Authority shall —

(a) at the same time send a copy of the notice to —

- (i) in the case of securities, the entity;
- (ii) in the case of units or derivatives of units in a business trust, the trustee of the business trust; or
- (iii) in the case of units in a collective investment scheme, the responsible person of the collective investment scheme,

together with a statement setting out the reasons for the giving of the notice; and

(b) as soon as practicable, furnish to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the approved exchange.

[1/2005]

(4) Any person who is aggrieved by any action taken by the Authority or an approved exchange under this section may, within 30 days after the person is notified of the action, appeal to the Minister whose decision shall be final.

[1/2005]

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

[1/2005]

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

[1/2005]

(7) Any approved exchange which permits trading in securities on the securities market of the approved exchange in contravention of a notice given under subsection (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.

[1/2005]

[SIA, s. 22]

Additional powers of Authority in respect of auditors

33.—(1) If an auditor of an approved exchange, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved exchange to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts of the approved exchange, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors in securities or futures contracts,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

[1/2005]

(2) An auditor of an approved exchange shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

[1/2005]

(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor of an approved exchange may have, apart from this section, as a defendant in an action for defamation.

[1/2005]

(4) The Authority may impose all or any of the following duties on an auditor of an approved exchange:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved exchange;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;

- (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

[1/2005]

(5) The approved exchange shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

[1/2005]

[E (DM) A, s. 16]

Emergency powers of Authority

34.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by notice in writing an approved exchange to take such action as it considers necessary to maintain or restore orderly trading in securities or futures contracts or any class of securities or futures contracts.

[1/2005]

(2) Without prejudice to subsection (1), the actions which the Authority may direct an approved exchange to take shall include —

- (a) terminating or suspending trading on the approved exchange;
- (b) confining trading to liquidation of securities or futures contracts positions;
- (c) ordering the liquidation of all positions or any part thereof or the reduction in such positions;
- (d) limiting trading to a specific price range;
- (e) modifying trading days or hours;
- (f) altering conditions of delivery;
- (g) fixing the settlement price at which positions are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in securities or futures contracts or any class of securities or futures contracts;
- (i) requiring margins or additional margins for any securities or futures contracts; and
- (j) modifying or suspending any of the business rules of the approved exchange.

[1/2005]

(3) Where the approved exchange fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may —

- (a) set margin levels in any securities or futures contract or class of securities or futures contracts to cater for the emergency;
- (b) set limits that may apply to market positions acquired in good faith prior to the date of the notice issued by the Authority; or
- (c) take such other action as the Authority may think fit to maintain or restore orderly trading in any securities or futures contracts or class of securities or futures contracts, or liquidation of any position in respect of any securities or futures contract or class of securities or futures contracts.

[1/2005]

(4) In this section, “emergency” means any threatened or actual market manipulation or cornering, and includes —

- (a) any act of any government affecting a commodity or securities;
- (b) any major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity or securities; or
- (c) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

[1/2005]

(5) The Authority may modify any action taken by an approved exchange under subsection (1), including the setting aside of that action.

[1/2005]

(6) Any person who is aggrieved by any action taken by the Authority or an approved exchange under this section may, within 30 days after the person is notified of the action, appeal to the Minister whose decision shall be final.

[1/2005]

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority or an approved exchange under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority or an approved exchange under this section, and

such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(9) Any approved exchange which fails to comply with a direction issued under subsection (1) 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.

[1/2005]

[FTA, s. 41]

Power of Authority to exempt approved exchanges from provisions of this Part

35. The Authority may exempt an approved exchange or a class of approved exchanges from any of the provisions of this Part if it is satisfied that the non-compliance by such approved exchange or class of approved exchanges with such provision would not detract from the objectives specified in section 5, subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

Subdivision (5) — Immunity

Immunity from criminal or civil liability

36. No criminal or civil liability shall be incurred by —

- (a) an approved exchange; or
- (b) any person acting on behalf of an approved exchange, including —
 - (i) any director of the approved exchange; or
 - (ii) any member of any committee established by the approved exchange,

for any thing 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, the discharge or purported discharge of its obligations under this Act or the business rules or, where appropriate, listing rules of the approved exchange.

[1/2005]

*Division 3 — Regulation of Recognised
Market Operators*

General obligations

37.—(1) A recognised market operator shall, in respect of every market which it operates —

- (a) as far as is reasonably practicable, ensure that the market is fair, orderly and transparent;
- (b) manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public; and
- (d) have sufficient financial, human and system resources —
 - (i) to operate a fair, orderly and transparent market;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements.

[1/2005]

(2) In subsection (1) (d), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[1/2005]

Obligation to notify Authority of certain matters

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

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

- (d) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the recognised market operator.

[1/2005]

Obligation to maintain proper records

39. A recognised market operator shall maintain a record of all transactions effected through its facilities in such form and manner as the Authority may prescribe, including —

- (a) the extent to which the record includes details of each transaction; and
- (b) the period of time that the record is to be maintained.

[1/2005]

Obligation to submit periodic reports

40. A recognised market operator shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

Obligation to assist Authority

41. A recognised market operator shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of —

- (a) such books and other information —
 - (i) relating to the business of the recognised market operator; or
 - (ii) in respect of such dealings in securities or trading in futures contracts; and
- (b) such other information,

as the Authority may require for the proper administration of this Act.

[1/2005]

Power of Authority to approve instruments, contracts and transactions

42.—(1) No recognised market operator shall, without the approval of the Authority, list, de-list or permit the trading of —

- (a) any futures contract;
- (b) any right, option or derivative in respect of any debentures, stock or shares;

- (c) any right under a contract for differences or under any other contract the purpose or purported purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
 - (i) the value or price of any debentures, stock or shares;
 - (ii) the value or price of any group of debentures, stock or shares; or
 - (iii) an index of any debentures, stock or shares; and
- (d) such other instrument, contract or transaction, or class of instruments, contracts or transactions, as the Authority may prescribe,

on any market operated by the recognised market operator.

[1/2005]

(2) The Authority may grant approval for any instrument, contract or transaction, or any class of instruments, contracts or transactions, referred to in subsection (1), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the recognised market operator.

[1/2005]

(3) The recognised market operator shall comply with the conditions and restrictions imposed under subsection (2).

[1/2005]

[FTA, s. 5]

Penalties under this Division

43. Any recognised market operator which contravenes section 37 (1), 38, 39, 40, 41 or 42 (1) or (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.

[1/2005]

Division 4 — General Powers of Authority

Power of Authority to remove officers

44.—(1) Where the Authority is satisfied that an officer of an approved exchange or a recognised market operator —

- (a) has wilfully contravened or wilfully caused that approved exchange or recognised market operator to contravene —
 - (i) this Act;
 - (ii) where applicable, its business rules; or

- (iii) where applicable, its listing rules;
- (b) has, without reasonable excuse, failed to ensure compliance by that approved exchange or recognised market operator, a member of that approved exchange or recognised market operator, or a person associated with that member with —
 - (i) this Act;
 - (ii) where applicable, the business rules of that approved exchange or recognised market operator; or
 - (iii) where applicable, the listing rules of that approved exchange or recognised market operator;
- (c) has failed to discharge the duties or functions of his office or employment;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing direct that approved exchange or recognised market operator to remove the officer from his office or employment, and that approved exchange or recognised market operator shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

[1/2005]

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved exchange or a recognised market operator has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1) (c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

[1/2005]

(3) Subject to subsection (4), the Authority shall not direct an approved exchange or a recognised market operator to remove an officer from his office or employment without giving the approved exchange or recognised market operator an opportunity to be heard.

[1/2005]

(4) The Authority may direct an approved exchange or a recognised market operator to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the approved exchange or recognised market operator an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(5) Where the Authority directs an approved exchange or a recognised market operator to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

[1/2005]

(6) Any approved exchange or a recognised market operator that is aggrieved by a direction of the Authority made in relation to the approved exchange or recognised market operator, as the case may be, under subsection (1) may, within 30 days after the approved exchange or recognised market operator, as the case may be, is notified of the direction, appeal to the Minister whose decision shall be final.

[1/2005]

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

[1/2005]

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

[1/2005]

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by an approved exchange or a recognised market operator in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[1/2005]

(10) Any approved exchange or a recognised market operator which, without reasonable excuse, contravenes a written notice issued under subsection (1) 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.

[1/2005]

Power of Authority to make regulations

45.—(1) Without prejudice to section 341, the Authority may make regulations relating to the exemption, recognition or approval of, and the requirements applicable to, persons who establish, operate or assist in establishing or operating markets.

[1/2005]

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for a penalty not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[1/2005]

Power of Authority to issue directions

46.—(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring fair, orderly and transparent markets;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or

- (e) for ensuring compliance with any condition or restriction as may be imposed by the Authority under section 8 (4) or (5), 14 (5), (6), (8) or (9), 17 (2), 27 (5) or (10), 28 (11), 29 (2), 35 or 42 (2), or such other obligations or requirements under this Act or as may be prescribed by the Authority,

issue directions, whether of a general or specific nature, by notice in writing, to an approved exchange, a recognised market operator or an exempt market operator, and the approved exchange, recognised market operator or exempt market operator shall comply with such directions.

[1/2005]

(2) Any approved exchange, a recognised market operator or an exempt market operator which, without reasonable excuse, contravenes a direction issued under subsection (1) 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.

[1/2005]

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

[1/2005]

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

PART III

CLEARING FACILITIES

Objectives of this Part

47. The objectives of this Part are —

- (a) to promote the safety and efficiency of clearing facilities that support systemically-important markets or form an integral part of the financial infrastructure; and
- (b) to reduce systemic risk.

[1/2005]

Interpretation of this Part

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

“default proceedings” means proceedings or other action taken by a designated clearing house under its default rules;

“default rules”, in relation to a designated clearing house, means the business rules of the designated clearing house which provide for the taking of proceedings or other action if a participant has failed, or appears to be unable or to be likely to become unable, to meet his obligations for all unsettled or open market contracts to which he is a party;

“defaulter” means a participant who is the subject of any default proceedings;

“market charge” means a security interest, whether fixed or floating, granted in favour of a designated clearing house —

- (a) over property held by or deposited with the designated clearing house; and
- (b) to secure liabilities arising directly in connection with the designated clearing house ensuring the performance of a market contract;

“market collateral” means property held by, or deposited with, a designated clearing house for the purpose of securing liabilities arising directly in connection with the designated clearing house ensuring the performance of market contracts;

“market contract” means —

- (a) a contract subject to the business rules of a designated clearing house that is entered into between the designated clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the designated clearing house; or
- (b) a transaction which is being cleared or settled using the clearing facility of a designated clearing house and in accordance with the business rules of the designated clearing house, whether or not a novation referred to in paragraph (a) is to take place;

“property”, in relation to a market charge or market collateral, means —

- (a) money, letters of credit, banker’s drafts, certified cheques, guarantees or other similar instruments;

- (b) securities;
- (c) futures contracts and any similar financial contract; or
- (d) other assets of value acceptable to a designated clearing house;

“relevant office holder” means —

- (a) the Official Assignee exercising his powers under the Bankruptcy Act (Cap. 20);
- (b) a person acting in relation to a company as its liquidator, its provisional liquidator, its receiver, its receiver and manager, its judicial manager or an equivalent person; or
- (c) a person acting in relation to an individual as his trustee in bankruptcy, the interim receiver of his property or an equivalent person;

“settlement”, in relation to a market contract, includes partial settlement.

[1/2005]

(2) Where a charge is granted partly for the purpose specified in the definition of “market charge” and partly for any other purpose or purposes, the charge shall be treated as a market charge under this Part insofar as it has effect for that specified purpose.

[1/2005]

(3) Where collateral is granted partly for the purpose specified in the definition of “market collateral” and partly for any other purpose or purposes, the collateral shall be treated as market collateral under this Part insofar as it has been provided for that specified purpose.

[1/2005]

(4) References in this Part to the law of insolvency are references to —

- (a) the Bankruptcy Act;
- (b) Parts VIIIA, IX and X of the Companies Act (Cap. 50); and
- (c) any other written law, whether in Singapore or elsewhere, which is concerned with, or in any way related to, the bankruptcy or insolvency of a person, other than the Banking Act (Cap. 19).

[1/2005]

(5) References in this Part to settlement, in relation to a market contract, are references to the discharge of the rights and liabilities

of the parties to the market contract, whether by performance, compromise or otherwise.

[1/2005]

[HK SF Bill, Clause 18]

Division 1 — Establishment of Clearing Facilities

Requirement to notify

49.—(1) Subject to subsection (2), no person shall establish or operate a clearing facility unless that person has notified the Authority of its intent to establish or operate a clearing facility at least 60 business days prior to the establishment, or commencement of operation, of the clearing facility.

[1/2005]

(2) A person may apply to the Authority to reduce the period referred to in subsection (1) and the Authority may, in its discretion and in relation only to that person, substitute such other period as may be determined by the Authority in place of the period referred to in subsection (1).

[1/2005]

(3) The notice referred to in subsection (1) shall provide information in such form and manner as may be prescribed by the Authority.

[1/2005]

(4) The application referred to in subsection (2) shall provide information in such form and manner as may be prescribed by the Authority.

[1/2005]

(5) The Authority may require a person providing the notice referred to in subsection (1) to furnish the Authority with such information or documents as the Authority considers necessary in relation to the notice.

[1/2005]

(6) In subsection (1), “business day” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50).

[1/2005]

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

[1/2005]

(8) 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.

[1/2005]

Provision of information to Authority

50.—(1) A person operating a clearing facility shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

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

[1/2005]

Notification of change of particulars

51.—(1) A person operating a clearing facility shall, no later than 14 days after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) a change of its chief executive officer;
- (b) a change of the address of the principal place of business at which it carries on the business of operating a clearing facility;
- (c) a material change in the business of the clearing facility;
- (d) an intention to cease operations of the clearing facility;
- (e) such other matter as the Authority may prescribe.

[1/2005]

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

[1/2005]

Obligation to assist Authority

52.—(1) A person operating a clearing facility shall provide such assistance to the Authority as the Authority may require for the

performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of —

(a) such books and other information —

- (i) relating to the business of the clearing facility; or
- (ii) in respect of any transaction or class of transactions cleared or settled by the clearing facility; and

(b) such other information,

as the Authority may require for the proper administration of this Act.

[1/2005]

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

[1/2005]

[Aust. Corporations 2001, s. 779D]

Exemption

53. Sections 49, 50 and 51 shall not apply to such persons or class of persons as may be prescribed by the Authority.

[1/2005]

Power to stop commencement or order cessation

54.—(1) The Authority may, prior to the end of the notification period referred to in section 49 (1) or such other period as may be substituted by the Authority under section 49 (2), by notice in writing, order a person who has given notice under section 49 (1) not to establish or commence operation of a clearing facility if —

- (a) the person did not furnish the Authority with such information or documents as required under section 49 (5);
- (b) any information or document provided by the person to the Authority is false or misleading; or
- (c) the Authority is of the opinion that it is in the interests of the public to do so.

[1/2005]

(2) The Authority may, by notice in writing, order a person to cease operating its clearing facility if —

- (a) the person has contravened any provision of this Act or any other written law in the course of operating its clearing facility;

- (b) the person provided any information or document to the Authority that is false or misleading;
- (c) in the opinion of the Authority, the person is operating the clearing facility in a manner that is likely to pose systemic risk to the financial system of Singapore;
- (d) the person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (e) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (f) the person has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or
- (g) the Authority is of the opinion that it is in the interests of the public to do so.

[1/2005]

(3) Subject to subsection (4), the Authority shall not make an order under subsection (1) or (2) without giving the person an opportunity to be heard.

[1/2005]

(4) The Authority may order a person not to establish or commence operation of a clearing facility under subsection (1) or to cease operating its clearing facility under subsection (2) on any of the following grounds without giving the person an opportunity to be heard:

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

[1/2005]

(5) Any person who is aggrieved by an order of the Authority made in relation to the person under subsection (1) or (2) may, within

30 days after the person is notified of that order, appeal to the Minister whose decision shall be final.

[1/2005]

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

[1/2005]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he considers necessary to any action taken by the Authority, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(8) Any order made under subsection (2) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of a clearing facility operated by the person, whether the agreement, transaction or arrangement was entered into before or after the order of the cessation; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[1/2005]

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

[1/2005]

Division 2 — Designation of Persons Operating Clearing Facilities

Designation of persons operating clearing facilities

55.—(1) The Authority may designate a person operating a clearing facility as a designated clearing house for the purposes of this Act, if it is satisfied that —

- (a) a disruption in the operations of the clearing facility could trigger, cause or transmit further systemic disruptions to capital markets or the financial system of Singapore;

(b) a disruption in the operations of the clearing facility could affect public confidence in capital markets, financial institutions or the financial system of Singapore; or

(c) it is in the interests of the public to do so.

[1/2005]

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

[1/2005]

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

[1/2005]

(4) The Authority shall not designate any person operating a clearing facility as a designated clearing house without giving that person an opportunity to be heard.

[1/2005]

(5) Any person operating a clearing facility who is aggrieved by a decision of the Authority to designate the person as a designated clearing house under subsection (1) may, within 30 days after the person is notified of the decision, appeal to the Minister whose decision shall be final.

[1/2005]

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

[1/2005]

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

[1/2005]

Prohibition on holding out

56.—(1) No person shall hold himself out as a designated clearing house unless he has been designated by the Authority under section 55 (1).

[1/2005]

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

[1/2005]

General criteria to be taken into account by Authority

57. Without affecting the generality of section 55, the Authority may have regard to the following matters in determining whether it is satisfied of the considerations in section 55 (1):

- (a) the size and structure, or proposed size and structure, of the clearing facility;
- (b) the nature of the services provided, or to be provided, by the clearing facility;
- (c) the nature of the transactions cleared, or to be cleared, by the clearing facility;
- (d) the market where the transactions cleared through the clearing facility are traded or to be traded;
- (e) the nature of the investors or participants, or proposed investors or participants, who may use or have an interest in the clearing facility;
- (f) whether the person operating the clearing facility is otherwise regulated by the Authority under this Act or any other written law;
- (g) whether the clearing facility takes on counterparty risks, through novation or otherwise, in the clearing or settlement of transactions;
- (h) the parties who may be affected in the event that the clearing facility runs into difficulties;
- (i) the interests of the public; and
- (j) any other circumstances that the Authority may deem relevant.

[1/2005]

Withdrawal of designation

58.—(1) The Authority may withdraw the designation of any designated clearing house at any time, on its own initiative or on the application of the designated clearing house, if the Authority is of the opinion that the considerations in section 55 (1) are no longer valid or satisfied.

[1/2005]

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

[1/2005]

(3) The Authority shall not withdraw on its own initiative the designation of any person operating a clearing facility as a designated clearing house without giving the person an opportunity to be heard.

[1/2005]

*Division 3 — Regulation of Designated
Clearing Houses*

*Subdivision (1) — Obligations of designated
clearing houses*

General obligations

59.—(1) A designated clearing house shall —

- (a) as far as is reasonably practicable, operate a safe and efficient clearing facility;
- (b) manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) ensure that access for participation in its clearing facility is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facility and to protect the interests of the investing public;
- (e) maintain business rules that make satisfactory provision for —
 - (i) the clearing facility to be operated in a safe and efficient manner; and
 - (ii) the proper regulation and supervision of its members;
- (f) enforce compliance by its members with its business rules;
- (g) have sufficient financial, human and system resources —
 - (i) to operate a safe and efficient clearing facility;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements; and
- (h) ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

[1/2005]

(2) The obligations imposed on the designated clearing house under this Act shall apply to all facilities for clearing or settlement operated by the designated clearing house.

[1/2005]

(3) Notwithstanding subsection (2), the Authority may by notice in writing exempt any clearing facility operated by a designated clearing house from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 47.

[1/2005]

(4) In subsection (1) (g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[1/2005]

Obligation to notify Authority of certain matters

60.—(1) A designated clearing house shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) the carrying on of any business by the designated clearing house other than —
 - (i) the business of operating a clearing facility;
 - (ii) a business incidental to operating a clearing facility;
or
 - (iii) such business or class of businesses as the Authority may prescribe;
- (b) the acquisition by the designated clearing house of a substantial shareholding in a corporation which does not carry on —
 - (i) the business of operating a clearing facility;
 - (ii) a business incidental to operating a clearing facility;
or
 - (iii) such business or class of businesses as the Authority may prescribe;
- (c) the designated clearing house becoming aware of a financial irregularity or other matter which in its opinion —
 - (i) may affect its ability to discharge its financial obligations; or

- (ii) may affect the ability of a member of the designated clearing house to meet its financial obligations to the designated clearing house;
- (d) the designated clearing house reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the designated clearing house;
- (e) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the designated clearing house.

[1/2005]

(2) Without prejudice to the generality of section 79 (1), the Authority may, at any time after receiving a notification referred to in subsection (1), issue directions to the designated clearing house —

- (a) where the notification relates to a matter referred to in subsection (1) (a) —
 - (i) to cease carrying on the first-mentioned business referred to in subsection (1) (a); or
 - (ii) to carry on the first-mentioned business referred to in subsection (1) (a) subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 79 (1); or
- (b) where the notification relates to a matter referred to in subsection (1) (b) —
 - (i) to dispose of the shareholding referred to in subsection (1) (b); or
 - (ii) to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 79 (1),

and the designated clearing house shall comply with such directions.

[1/2005]

Obligation to manage risks prudently

61.—(1) Without prejudice to the generality of section 59 (1) (b), a designated clearing house shall ensure that the systems and controls concerning the assessment and management of risks to its clearing

facility are adequate and appropriate for the scale and nature of its operations.

[1/2005]

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

- (a) the limits in respect of positions held with the designated clearing house; and
- (b) the measures to manage any risks assumed by the designated clearing house.

[1/2005]

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

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

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

[1/2005]

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

- (a) account for all such money and assets on an aggregated basis, separate from all other money and assets received by the designated clearing house from the member; and
- (b) subject to sections 63 and 64, ensure that such money is deposited in a trust account, or such assets are deposited in a custody account, to be held for the benefit of the customers of the member and disposed of or used only in respect of or in relation to contracts of customers of the member.

[1/2005]

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

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

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

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

(ii) in the case of assets —

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

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

[1/2005]

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

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

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

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

[1/2005]

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

[1/2005]

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

64.—(1) Subject to subsection (2), a designated clearing house may invest any money or assets deposited or paid in respect of or in relation to contracts of customers of a member and held by the designated clearing house in the course of its clearing or settlement activities, including any money deposited in the trust account and any assets deposited in the custody account referred to in section 62 (2) (b), in any security, instrument or other form of investment arrangement as the Authority may prescribe.

[1/2005]

(2) The designated clearing house shall seek the approval of the Authority before investing any such money or assets under subsection (1).

[1/2005]

(3) The designated clearing house seeking the approval of the Authority under subsection (2) shall satisfy the Authority —

- (a) that the management of the investments made by the designated clearing house is consistent with the principles of preserving principal and maintaining sufficient liquidity to meet the obligations of customers of members of the designated clearing house;
- (b) that prudential measures have been adopted to manage the risks in respect of the designated clearing house's investment activities; and
- (c) of any other matter which the Authority considers necessary for the sound management of the investments.

[1/2005]

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

[1/2005]

Obligation to maintain proper records

65.—(1) A designated clearing house shall maintain a record of all transactions effected through its clearing facility in such form and manner as the Authority may prescribe.

[1/2005]

(2) The matters which the Authority may prescribe under subsection (1) shall include —

- (a) the extent to which the record includes details of each transaction; and
- (b) the period of time that the record is to be maintained.

[1/2005]

Obligation to submit periodic reports

66. A designated clearing house shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

Obligation to assist Authority

67. A designated clearing house shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of —

- (a) such books and other information —
 - (i) relating to the business of the designated clearing house; or
 - (ii) in respect of any transaction or class of transactions cleared or settled by the designated clearing house; and
- (b) such other information,

as the Authority may require for the proper administration of this Act.

[1/2005]

Obligation to maintain confidentiality

68.—(1) Subject to subsection (2), a designated clearing house and its officers and employees shall maintain, and aid in maintaining, confidentiality of all user information that —

- (a) comes to the knowledge of the designated clearing house or any of its officers or employees; or

- (b) is in the possession of the designated clearing house or any of its employees.

[1/2005]

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

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or furnished; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[1/2005]

(3) For the avoidance of doubt, nothing in this section shall be construed as preventing a designated clearing house from entering into a written agreement with a user which obliges the designated clearing house to maintain a higher degree of confidentiality than that specified in this section.

[1/2005]

Annual fees payable by designated clearing house

69.—(1) Every designated clearing house shall pay to the Authority such annual fees as may be prescribed and in such manner as may be specified by the Authority.

[1/2005]

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

[1/2005]

Penalties under this Subdivision

70. Any designated clearing house which contravenes section 59 (1), 60, 61 (1), 62 (2) or (3), 63 (2), 64 (2), 65, 66, 67 or 68 (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.

[1/2005]

Subdivision (2) — Rules of designated clearing houses

Business rules of designated clearing houses

71.—(1) Without limiting the generality of sections 59 and 81S —

- (a) the Authority may prescribe the matters that a designated clearing house shall make provision for in the business rules of the designated clearing house; and
- (b) the designated clearing house shall make provision for these matters in its business rules.

[1/2005]

(2) A designated clearing house shall not make any amendment to its business rules unless it complies with such requirements as the Authority may prescribe.

[1/2005]

(3) In this Subdivision, any reference to an amendment to a business rule shall be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under the business rule, whether the change is made by an alteration to the text of the rule or by any other notice issued by or on behalf of the designated clearing house.

[1/2005]

(4) Any designated clearing house which contravenes subsection (1) or (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.

[1/2005]

Business rules of designated clearing houses have effect as contract

72.—(1) The business rules of a designated clearing house shall be deemed to be, and shall operate as, a binding contract —

- (a) between the designated clearing house and each issuer of securities;
- (b) between the designated clearing house and each participant;
- (c) between each issuer of securities and each participant; and
- (d) between each participant and every other participant.

[1/2005]

(2) The designated clearing house, each issuer of securities and each participant shall be deemed to have agreed to observe, and perform the obligations under, the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the designated clearing house, issuer or participant, as the case may be.

[1/2005]

(3) In this section, “issuer”, in relation to any securities, means a person who issued or made available, or proposes to issue or make available, the securities, being securities that are cleared or settled by the designated clearing house.

[1/2005]

Power of court to order observance or enforcement of business rules

73.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a designated clearing house fails to do so, the High Court may, on the application of the Authority, a designated clearing house or a person aggrieved by the failure, after giving the first-mentioned person an opportunity to be heard, make an order directing the first-mentioned person to comply with, observe, enforce or give effect to those business rules.

[1/2005]

(2) In this section, “person” includes a designated clearing house.

[1/2005]

(3) This section is in addition to, and not in derogation of, any other remedies available to the aggrieved person referred to in subsection (1).

[1/2005]

Non-compliance with business rules not to substantially affect rights of person

74. Any failure by a designated clearing house to comply with this Act or its business rules in relation to a matter shall not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules.

[1/2005]

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in designated clearing houses

75.—(1) No person shall enter into any agreement to acquire shares in a designated clearing house by virtue of which he would, if the agreement had been carried out, become a substantial shareholder of the designated clearing house without first obtaining the approval of the Authority to enter into the agreement.

[1/2005]

(2) No person shall become —

(a) a 12% controller; or

(b) a 20% controller,

of a designated clearing house without first obtaining the approval of the Authority.

[1/2005]

(3) In subsection (2) —

“12% controller” means a person, not being a 20% controller, who alone or together with his associates —

(a) holds not less than 12% of the shares in the designated clearing house; or

(b) is in a position to control not less than 12% of the votes in the designated clearing house;

“20% controller” means a person who, alone or together with his associates —

(a) holds not less than 20% of the shares in the designated clearing house; or

(b) is in a position to control not less than 20% of the votes in the designated clearing house.

[1/2005]

(4) In this section —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section 7 (6) to (10) of the Companies Act (Cap. 50); or

(ii) he otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7 (6) to (10) of the Companies Act;

(b) a reference to the control of a percentage of the votes in a designated clearing house shall be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the designated clearing house; and

(c) a person, *A*, is an associate of another person, *B*, if —

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of *B*;

- (ii) *A* is a corporation 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 *B* or, where *B* is a corporation, of the directors of *B*;
- (iii) *B* is a corporation 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 *A* or, where *A* is a corporation, of the directors of *A*;
- (iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;
- (v) *B* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *A*;
- (vi) *A* is a related corporation of *B*;
- (vii) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *A*;
- (viii) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *B*; or
- (ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the designated clearing house.

[1/2005]

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

[1/2005]

(6) Without prejudice to subsection (11), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or

any condition or restriction imposed under subsection (5), by notice in writing, direct the transfer or disposal of all or any of the shares of a designated clearing house in which a substantial shareholder, 12% controller or 20% controller of the designated clearing house has an interest.

[1/2005]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association or other constituent document or documents of the designated clearing house —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the designated clearing house shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the designated clearing house, the designated clearing house shall not make any payment (whether by way of cash dividend, dividend in kind, or otherwise) in respect of the shares which are the subject of the direction.

[1/2005]

(8) Any issue of shares by a designated clearing house in contravention of subsection (7) (b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (6) shall immediately return those shares to the designated clearing house, upon which the designated clearing house shall return to the person any payment received from him in respect of those shares.

[1/2005]

(9) Any payment made by a designated clearing house in contravention of subsection (7) (c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (6) shall immediately return the payment he has received to the designated clearing house.

[1/2005]

(10) The Authority may exempt —

- (a) any person or class of persons; or
- (b) any class or description of shares or interests in shares,

from subsection (1) or (2), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(11) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), 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.

[1/2005]

(12) Any person who contravenes subsection (7) (b) or (c), (8) or (9) or any direction issued by the Authority under 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.

[1/2005]

[E (DM) A, s. 15]

Approval of chairman, chief executive officer, director and key persons

76.—(1) No designated clearing house shall appoint a person as its chairman, chief executive officer or director unless the designated clearing house has obtained the approval of the Authority.

[1/2005]

(2) The Authority may, by notice in writing, require a designated clearing house to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the designated clearing house and the designated clearing house shall comply with the notice.

[1/2005]

(3) An application for approval under subsection (1) or (2) shall be made in such form and manner as the Authority may prescribe.

[1/2005]

(4) Without prejudice to the generality of section 81S and any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

[1/2005]

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the designated clearing house an opportunity to be heard.

[1/2005]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the designated clearing house an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

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

[1/2005]

(8) A designated clearing house shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairman, chief executive officer, director or person referred to in the notice issued by the Authority under subsection (2).

[1/2005]

(9) Without prejudice to the generality of section 81S, the Authority may make regulations relating to the composition and duties of the board of directors or any committee of a designated clearing house.

[1/2005]

(10) In this section, “committee” includes any committee of directors, disciplinary committee, appeals committee or any body responsible for disciplinary action against a member of a designated clearing house.

[1/2005]

(11) The Authority may exempt any designated clearing house or a class of designated clearing houses from complying with subsection (1) or (8), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(12) Subject to subsection (11), any designated clearing house which contravenes subsection (1), (2) or (8) 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.

[1/2005]

Listing of designated clearing houses on securities market

77.—(1) The securities of a designated clearing house shall not be listed for quotation on a securities market that is operated by any of its related corporations unless the designated clearing house and the operator of the securities market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of the trading of the securities of the designated clearing house.

[1/2005]

(2) Where the securities of a designated clearing house are listed for quotation on a securities market operated by any of its related corporations, the listing rules of the securities market shall be deemed to allow the Authority to act in place of the operator of the securities market in making decisions and taking action, or to require the operator of the securities market to make decisions and to take action on behalf of the Authority, on —

- (a) the admission or removal of the designated clearing house to or from the official list of the securities market; and
- (b) granting approval for the securities of a designated clearing house to be, or stopping or suspending the securities of the designated clearing house from being listed for quotation or quoted on the securities market.

[1/2005]

(3) The Authority may, by notice in writing to the operator of the securities market —

- (a) modify the listing rules of the securities market for the purpose of their application to the listing of the securities of the designated clearing house for quotation or trading; or
- (b) waive the application of any listing rule of the securities market to the designated clearing house.

[1/2005]

(4) Any designated clearing house 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.

[1/2005]

Subdivision (4) — Powers of Authority

Power to impose conditions or restrictions

78.—(1) The Authority may impose on a designated clearing house such conditions or restrictions as it thinks fit by notice in writing, in addition to the obligations imposed on the designated clearing house under this Division, for the purposes of furthering the objectives specified in section 47.

[1/2005]

(2) The Authority may, at any time, by notice in writing to the designated clearing house, vary any condition or restriction as it may think fit.

[1/2005]

(3) Without affecting the generality of subsection (1) or (2), the conditions or restrictions that the Authority may impose include conditions or restrictions relating to —

- (a) the activities that the designated clearing house may undertake;
- (b) the products that may be cleared by the clearing facility;
- (c) the nature of investors or participants who may use or participate in the clearing facility; and
- (d) the requirement for the designated clearing house to operate as a corporation.

[1/2005]

(4) Any designated clearing house which contravenes any condition or restriction imposed under subsection (1) or (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.

[1/2005]

Power of Authority to issue directions

79.—(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring the safe and efficient clearing and settlement of transactions;

1.4.2006

- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction as may be imposed by the Authority under section 60 (2), 64 (4), 75 (5) or (10), 76 (11), 78 (1) or (2) or 81C, or such other obligations or requirements under this Act or as may be prescribed by the Authority,

issue directions by notice in writing either of a general or specific nature to a designated clearing house, and the designated clearing house shall comply with such directions.

[1/2005]

(2) Any designated clearing house which, without reasonable excuse, contravenes a direction issued under subsection (1) 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.

[1/2005]

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

[1/2005]

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

Power to order cessation of designated clearing houses

80.—(1) The Authority may, by notice in writing to a designated clearing house, order the designated clearing house to cease operating any of its clearing facilities if —

- (a) the designated clearing house fails to comply with any obligation imposed on it under section 59 (1);
- (b) the designated clearing house contravenes any provision of this Act or any condition or restriction imposed on it, or direction issued to it, by the Authority under any provision of this Act;
- (c) the designated clearing house is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) the designated clearing house operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public;

- (e) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the designated clearing house;
- (f) the designated clearing house has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or
- (g) the designated clearing house has provided any information or document to the Authority that is false or misleading.

[1/2005]

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

[1/2005]

(3) Subject to subsection (4), the Authority shall not order a designated clearing house to cease operating a clearing facility under subsection (1) without giving the designated clearing house an opportunity to be heard.

[1/2005]

(4) The Authority may order a designated clearing house to cease operating a clearing facility under subsection (1) on any of the following grounds without giving the designated clearing house an opportunity to be heard:

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

[1/2005]

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

[1/2005]

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

[1/2005]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(8) The Authority may direct, by notice in writing, a designated clearing house, to whom an order to cease operations of its clearing facility has been made by the Authority under subsection (1), to take such action as it considers necessary, including any of the following actions:

- (a) ordering the liquidation of all positions or part thereof or the reduction in such positions;
- (b) altering conditions of delivery of transactions cleared or settled or to be cleared or settled through the clearing facility;
- (c) fixing the settlement price at which transactions are to be liquidated;
- (d) requiring margins or additional margins for transactions cleared or settled or to be cleared or settled through the clearing facility;
- (e) modifying or suspending any of the business rules of the designated clearing house,

and the designated clearing house shall comply with that direction.

[1/2005]

(9) The Authority may modify any action taken by a designated clearing house under subsection (8), including the setting aside of that action.

[1/2005]

(10) Any person who is aggrieved by any action taken by the Authority or a designated clearing house under subsection (8) or (9) may, within 30 days after the person is notified of the action, appeal to the Minister whose decision shall be final.

[1/2005]

(11) Notwithstanding the lodging of an appeal under subsection (10), any action taken by the Authority or a designated clearing house under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(12) The Minister may, when deciding an appeal under subsection (10), make such modification as he considers necessary to any action taken by the Authority or a designated clearing house under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(13) Subject to any direction issued by the Authority under subsection (8) to the contrary, an order of cessation made under subsection (1) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of the clearing facility operated by the designated clearing house, whether the agreement, transaction or arrangement was entered into before or after the order of the cessation; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[1/2005]

(14) Any designated clearing house which contravenes an order of cessation made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(15) Any designated clearing house which fails to comply with a direction issued under subsection (8) 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.

[1/2005]

Emergency powers of Authority

81.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by notice in writing a designated clearing house to take such action as it considers necessary to maintain or restore safe and efficient operations of the clearing facilities operated by the designated clearing house.

[1/2005]

(2) Without prejudice to subsection (1), the actions which the Authority may direct a designated clearing house to take include —

- (a) ordering the liquidation of all positions or part thereof or the reduction of such positions;
- (b) altering conditions of delivery of transactions cleared or settled or to be cleared or settled through the clearing facility;
- (c) fixing the settlement price at which transactions are to be liquidated;
- (d) requiring margins or additional margins for transactions cleared or settled or to be cleared or settled through the clearing facility; and
- (e) modifying or suspending any of the business rules of the designated clearing house.

[1/2005]

(3) Where a designated clearing house fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may —

- (a) set margin levels for transactions cleared or settled or to be cleared or settled through the clearing facility to cater for the emergency;
- (b) set limits that may apply to market positions acquired in good faith prior to the date of the notice issued by the Authority; or
- (c) take such other action as the Authority thinks fit to maintain or restore safe and efficient operations of the clearing facilities operated by the designated clearing house.

[1/2005]

(4) In this section, “emergency” means any threatened or actual market manipulation or cornering, and includes —

- (a) any act of any government affecting a commodity or securities;
- (b) any major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity or securities; or
- (c) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

[1/2005]

(5) The Authority may modify any action taken by a designated clearing house under subsection (1), including the setting aside of that action.

[1/2005]

(6) Any person who is aggrieved by any action taken by the Authority or a designated clearing house under this section may, within 30 days after the person is notified of the action, appeal to the Minister whose decision shall be final.

[1/2005]

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority or a designated clearing house under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

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

[1/2005]

(9) Any designated clearing house which fails to comply with a direction issued under subsection (1) 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.

[1/2005]

[FTA, s. 41]

Power of Authority to remove officers

81A.—(1) Where the Authority is satisfied that an officer of a designated clearing house —

- (a) has wilfully contravened or wilfully caused that designated clearing house to contravene this Act or its business rules;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act or the business rules of that designated clearing house, by that designated clearing house or a member of that designated clearing house or a person associated with that member;
- (c) has failed to discharge the duties or functions of his office or employment;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;

- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly,

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

[1/2005]

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of a designated clearing house has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1) (c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

[1/2005]

(3) Subject to subsection (4), the Authority shall not direct a designated clearing house to remove an officer from his office or employment without giving the designated clearing house an opportunity to be heard.

[1/2005]

(4) The Authority may direct a designated clearing house to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the designated clearing house an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(5) Where the Authority directs a designated clearing house to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

[1/2005]

(6) Any designated clearing house that is aggrieved by a direction of the Authority made in relation to the designated clearing house under subsection (1) may, within 30 days after the designated clearing house is notified of the direction, appeal to the Minister whose decision shall be final.

[1/2005]

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

[1/2005]

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

[1/2005]

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by a designated clearing house in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[1/2005]

(10) Any designated clearing house which, without reasonable excuse, contravenes a written notice issued under subsection (1) 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.

[1/2005]

Additional powers of Authority in respect of auditors

81B.—(1) If an auditor of a designated clearing house, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the designated clearing house to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or

- (c) any irregularity that has or may have a material effect upon the accounts of the designated clearing house, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

[1/2005]

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

[1/2005]

(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor may have, apart from this section, as a defendant in an action for defamation.

[1/2005]

(4) The Authority may impose all or any of the following duties on an auditor of a designated clearing house:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the designated clearing house;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

[1/2005]

(5) The designated clearing house shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

[1/2005]

[E (DM) A, s. 16]

Power of Authority to exempt designated clearing houses from provisions of this Part

81C. The Authority may exempt a designated clearing house or a class of designated clearing houses from any of the provisions of this Part if it is satisfied that the non-compliance by such designated clearing house or class of designated clearing houses with such provision would

not detract from the objectives specified in section 47, subject to such conditions or restrictions as may be imposed by the Authority. [1/2005]

Subdivision (5) — Immunity

Immunity from criminal or civil liability

81D. No criminal or civil liability shall be incurred by —

- (a) a designated clearing house; or
- (b) any person acting on behalf of a designated clearing house, including —
 - (i) any director of the designated clearing house; or
 - (ii) any member of any committee established by the designated clearing house,

for any thing 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, the discharge or purported discharge of its or his obligations under this Act or the business rules of the designated clearing house, including its default rules.

[E (DM) A, s. 16]

[1/2005]

Division 4 — Insolvency

Application of this Division

81E. This Division shall apply to such transaction or class of transactions cleared or settled by any designated clearing house or class of designated clearing houses, and to such extent as may be prescribed by the Authority.

[1/2005]

Proceedings of designated clearing house shall take precedence over law of insolvency

81F.—(1) The following shall not be invalid to any extent at law by reason only of inconsistency with any law relating to the distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver, a receiver and manager or an equivalent person over any of the assets of a person:

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;

1.4.2006

- (c) the provision of market collateral;
- (d) a contract effected by a designated clearing house for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;
- (e) a disposition of property in accordance with the business rules of a designated clearing house as to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge;
- (i) any default proceedings.

[1/2005]

(2) A relevant office holder, or a court applying the law relating to insolvency in Singapore, shall not exercise his or its power to prevent, or interfere with —

- (a) the settlement of a market contract in accordance with the business rules of a designated clearing house, or proceedings or other action taken under those business rules; or
- (b) default proceedings.

[1/2005]

(3) Subsection (2) shall not operate to prevent a relevant office holder from recovering an amount under section 81L after the completion of a specified event referred to in section 81L (3).

[1/2005]

(4) Where a participant which is also a bank licensed under the Banking Act (Cap. 19) becomes insolvent, the liabilities of the bank accorded priority under sections 61 and 62 of that Act and the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231) shall have priority over unsecured liabilities of the bank accorded priority under the provisions of this Division.

[1/2005]

[HK SF Bill, Clause 45]

Supplementary provisions as to default proceedings

81G.—(1) A court may, on the application of a relevant office holder, make an order to alter, or to release the relevant office holder from complying with, the functions of his office that are affected by

default proceedings if default proceedings have been, could be, or could have been, taken.

[1/2005]

(2) The functions of the relevant office holder shall be construed subject to an order made under subsection (1).

[1/2005]

(3) Sections 45, 74 and 76 of the Bankruptcy Act (Cap. 20) and sections 210, 258, 260, 262 (3), 299 (1) and 309 of the Companies Act (Cap. 50) shall not prevent, or interfere with, any default proceedings.

[1/2005]

[HK SF Bill, Clause 46]

Duty to report on completion of default proceedings

81H.—(1) A designated clearing house shall, upon the conclusion of any default proceeding commenced by it, make a report on those proceedings stating in respect of each defaulter who is a subject of those proceedings —

(a) the net sum, if any, certified by the designated clearing house to be payable by or to the defaulter; or

(b) the fact that no sum is so payable,

as the case may be, and the designated clearing house may include in that report such other particulars in respect of those proceedings as it thinks fit.

[1/2005]

(2) A designated clearing house which has made a report under subsection (1) shall supply the report to —

(a) the Authority;

(b) any relevant office holder acting in relation to —

(i) the defaulter to whom the report relates; or

(ii) the estate of that defaulter; and

(c) where there is no relevant office holder referred to in paragraph (b), the defaulter to whom the report relates.

[1/2005]

(3) The designated clearing house shall publish a notice of the fact that a report has been made under subsection (1) in such manner as it thinks appropriate to bring that fact to the attention of the creditors of the defaulter to whom the report relates.

[1/2005]

(4) Where a relevant office holder or defaulter receives under subsection (2) a report made under subsection (1), he shall, at the request of a creditor of the defaulter to whom the report relates —

- (a) make the report available for inspection by the creditor; and
- (b) on payment of such reasonable fee as the relevant office holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.

[1/2005]

(5) In subsections (2), (3) and (4), “report” includes a copy of a report.

[1/2005]

[HK SF Bill, Clause 47]

Net sum payable on completion of default proceedings

81I.—(1) This section shall apply to any net sum certified under section 81H (1) (a) by a designated clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

[1/2005]

(2) Notwithstanding section 87 or 88 of the Bankruptcy Act (Cap. 20), and section 327 of the Companies Act (Cap. 50), where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum as certified under section 81H (1) (a) shall —

- (a) be provable in the bankruptcy or winding up or payable to the relevant office holder, as the case may be; and
- (b) be taken into account, where appropriate, under section 88 of the Bankruptcy Act or section 327 of the Companies Act.

[1/2005]

[HK SF Bill, Clause 48]

Disclaimer of onerous property, rescission of contracts, etc.

81J.—(1) Section 110 of the Bankruptcy Act and section 332 of the Companies Act shall not apply —

- (a) to a market contract;
- (b) to a contract effected by a designated clearing house for the purpose of realising property provided as market collateral;
- (c) to a market charge; or
- (d) to any default proceedings.

[1/2005]

(2) Section 77 of the Bankruptcy Act and sections 259 and 299 (1) of the Companies Act shall not apply to any act, matter or thing which has been done under —

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;

- (c) the provision of market collateral;
- (d) a contract effected by a designated clearing house for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;
- (e) a disposition of property in accordance with the business rules of a designated clearing house relating to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

[HK SF Bill, Clause 49]

[1/2005]

Adjustment of prior transactions

81K.—(1) No order shall be made by a court under —

- (a) section 98 or 99 of the Bankruptcy Act (Cap. 20);
- (b) section 227T, 329 or 331 of the Companies Act (Cap. 50); or
- (c) section 73B of the Conveyancing and Law of Property Act (Cap. 61),

in relation to any matter to which this section applies.

[1/2005]

(2) The matters to which this section applies are —

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by a designated clearing house for the purpose of realising property provided as market collateral;
- (e) a disposition of property in accordance with the business rules of a designated clearing house relating to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge;
- (i) any default proceedings.

[1/2005]

*[HK SF Bill, Clause 50]***Right of relevant office holder to recover certain amounts arising from certain transactions**

81L.—(1) Where a participant (referred to as the first participant) sells securities at an over-value to, or purchases securities at an under-value from, another participant (referred to as the second participant) in the circumstances referred to in subsection (3), and thereafter a relevant office holder acts for —

- (a) the second participant;
- (b) the principal of the second participant in the sale or purchase; or
- (c) the estate of the second participant or person referred to in paragraph (b),

then, unless a court otherwise orders, the relevant office holder may recover from the first participant, or the principal of the first participant, an amount equal to the specified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.

[1/2005]

(2) The amount equal to the specified gain is recoverable even if the sale or purchase may have been discharged according to the business rules of a designated clearing house and replaced by a market contract.

[1/2005]

(3) The circumstances referred to in subsection (1) are that —

- (a) a specified event has occurred in relation to the second participant or the principal of the second participant within the period of 6 months immediately following the date on which the sale or purchase was entered into; and
- (b) at the time the sale or purchase was entered into, the first participant or the principal of the first participant knew, or ought reasonably to have known, that a specified event was likely to occur in relation to the second participant or the principal of the second participant.

[1/2005]

(4) In this section —

“specified event”, in relation to a second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means —

- (a) the making of a bankruptcy order against the second participant or that person, as the case may be;
- (b) the making of a statutory declaration in respect of the second participant or that person, as the case may be, under section 291 (1) of the Companies Act (Cap. 50);
- (c) the summoning of a meeting of creditors in relation to the second participant or that person, as the case may be, under section 296 of the Companies Act;
- (d) the making of an application for the winding up of the second participant or that person, as the case may be, before a court; or
- (e) the making of a judicial management order by a court under Part VIIIA of the Companies Act in respect of the second participant or that person, as the case may be;

“specified gain”, in relation to a sale or purchase referred to in subsection (1), means the difference between —

- (a) the market value of the securities which are the subject of the sale or purchase; and
- (b) the value of the consideration for the sale or purchase, as at the time the sale or purchase was entered into.

[HK SF Bill, Clause 51]

[1/2005; 42/2005]

Application of market collateral not affected by certain other interest, etc.

81M.—(1) This section shall have effect with respect to the application of a designated clearing house of property provided as market collateral (referred to in this section as the property).

[1/2005]

(2) The property may be applied in accordance with the business or default rules of a designated clearing house so far as it is necessary for it to be so applied notwithstanding —

- (a) any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the designated clearing house had actual notice of the interest, right or breach of duty (other than any interest or right arising from the situation referred to in paragraph (b)), as the case may be, at the time the property was provided as market collateral; or
- (b) that the property is deposited by the designated clearing house in a trust account held for the benefit of a participant.

[1/2005]

(3) No right or remedy arising subsequent to the provision of the property as market collateral may be enforced to prevent, or interfere with, the application of the property by the designated clearing house in accordance with its business or default rules.

[1/2005]

(4) Where a designated clearing house has power under this section to apply the property notwithstanding an interest, a right or a remedy, a person to whom the designated clearing house disposes of the property in accordance with its business or default rules shall take free from that interest, right or remedy.

[1/2005]

[HK SF Bill, Clause 52]

Enforcement of judgments over property subject to market charge, etc.

81N.—(1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or an order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in, or security over, the property, except with the consent of the designated clearing house concerned.

[1/2005]

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or an order against any property, any injunction or other remedy granted by any court with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

[1/2005]

[HK SF Bill, Clause 53]

Law of insolvency in other jurisdictions

81O.—(1) Notwithstanding any other written law or rule of law, a court shall not recognise or give effect to —

(a) an order of a court exercising jurisdiction under the law of insolvency in a place outside Singapore; or

(b) an act of a person appointed in a place outside Singapore to perform a function under the law of insolvency in that place, insofar as the making of the order or doing of the act would be prohibited under this Act for a court in Singapore or a relevant office holder, respectively.

[1/2005]

(2) In this section, “law of insolvency”, in relation to a place outside Singapore, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Singapore.

[1/2005]

[HK SF Bill, Clause 54]

Participant to be party to certain transactions as principal

81P.—(1) Where a participant —

- (a) in his capacity as such enters into any transaction (including a market contract) with a designated clearing house; and
- (b) but for this subsection or any provision in the business rules or default rules of a designated clearing house, would be a party to that transaction as agent,

then, notwithstanding any other written law or rule of law, as between, but only as between, the designated clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any action, claim or demand, whether civil or criminal) —

- (i) be deemed not to be a party to that transaction as agent; and
- (ii) be deemed to be a party to that transaction as principal.

[1/2005]

(2) Where —

- (a) 2 or more participants in their capacities as such enter into any transaction; and
- (b) but for this subsection, any of the participants would be a party to that transaction as agent,

then, notwithstanding any other written law or rule of law, a participant to whom paragraph (b) applies shall for all purposes (including any action, claim or demand, whether civil or criminal), except as between,

but only as between, him and the person who is his principal in respect of that transaction —

- (i) be deemed not to be a party to the transaction as agent; and
- (ii) be deemed to be a party to the transaction as principal.

[1/2005]

[HK SF Bill, Clause 55]

Preservation of rights, etc.

81Q. Except to the extent that it expressly provides, this Division shall not operate to limit, restrict or otherwise affect —

- (a) any right, title, interest, privilege, obligation or liability of a person; or
- (b) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

[1/2005]

[HK SF Bill, Clause 57]

Immunity from criminal or civil liability

81R.—(1) No criminal or civil liability shall be incurred by —

- (a) a person discharging, by virtue of a delegation under the default rules of a designated clearing house, an obligation of the designated clearing house in connection with any default proceedings; or
- (b) any person acting on behalf of a person referred to in paragraph (a), including —
 - (i) any member of the board of directors of the last-mentioned person; and
 - (ii) any member of any committee established by the last-mentioned person,

in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of that obligation.

[1/2005]

(2) Where a relevant office holder takes action in relation to any property of a defaulter which is liable to be dealt with in accordance with the default rules of a designated clearing house, and reasonably believes or has reasonable grounds for believing that he is entitled to take that action, he shall not be liable to any person in respect of any loss or damage resulting from his action except insofar as the loss

or damage, as the case may be, is caused by the negligence of the office holder.

[HK SF Bill, Clause 39]

[1/2005]

Division 5 — General Powers of Authority

Power of Authority to make regulations

81S.—(1) Without prejudice to section 341, the Authority may make regulations relating to requirements applicable to any person operating a clearing facility, whether or not the person has been designated by the Authority as a designated clearing house under section 55 (1).

[1/2005]

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for penalties not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, to a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[1/2005]

PART IIIA

APPROVED HOLDING COMPANIES

Objectives of this Part

81T. The objectives of this Part are —

- (a) to provide a regulatory framework for the establishment and operation of holding companies of —
 - (i) approved exchanges;
 - (ii) designated clearing houses; and
 - (iii) corporations that are approved holding companies,and to ensure that such holding companies are fit and proper to perform their functions; and
- (b) to reduce systemic risk.

[1/2005]

*Division 1 — Establishment of
Approved Holding Companies***Requirement for approval**

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

[1/2005]

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

[1/2005]

Application for approval

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

[1/2005]

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

- (a) made in such form and manner as the Authority may prescribe; and
- (b) accompanied by a non-refundable prescribed application fee, which shall be paid in the manner specified by the Authority.

[1/2005]

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

[1/2005]

Power of Authority to approve holding companies

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

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

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

[1/2005]

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

[1/2005]

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

[1/2005]

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

[1/2005]

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

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

[1/2005]

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

[1/2005]

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

[1/2005]

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

[1/2005]

Annual fees payable by approved holding company

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

[1/2005]

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

[1/2005]

Cancellation of approval

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

[1/2005]

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

[1/2005]

Power of Authority to revoke approval

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

- (a) the corporation ceases to be the holding company of any approved exchange, designated clearing house or corporation which is an approved holding company;
- (b) the corporation is being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (c) the corporation contravenes —
 - (i) any condition or restriction applicable in respect of its approval;
 - (ii) any direction issued to it by the Authority under this Act; or
 - (iii) any provision in this Act;
- (d) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public;
- (e) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;

- (f) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or
- (g) any information or document provided by the corporation to the Authority is false or misleading.

[1/2005]

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

[1/2005]

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

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

[1/2005]

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

[1/2005]

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

[1/2005]

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

[1/2005]

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

[1/2005]

*Division 2 — Regulation of
Approved Holding Companies*

Obligation to notify Authority of certain matters

81ZA.—(1) An approved holding company shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) any material change to the information provided by the approved holding company in its application under section 81V (1);
- (b) the carrying on of any activity by the approved holding company other than —
 - (i) the activities of a holding company of any approved exchange, designated clearing house or corporation that is an approved holding company;
 - (ii) an activity incidental to being a holding company of any approved exchange, designated clearing house or corporation that is an approved holding company; or
 - (iii) such activity or class of activities as the Authority may prescribe;
- (c) the acquisition by the approved holding company of a substantial shareholding in a corporation which does not carry on —
 - (i) any activity of a holding company of any approved exchange, designated clearing house or corporation that is an approved holding company;
 - (ii) any activity incidental to being a holding company of any approved exchange, designated clearing house or corporation that is an approved holding company; or
 - (iii) such activity or class of activities as the Authority may prescribe;
- (d) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the approved holding company.

[1/2005]

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

- (a) where the notification relates to a matter referred to in subsection (1) (b) —
 - (i) to cease carrying on the first-mentioned activity referred to in subsection (1) (b); or
 - (ii) to carry on the first-mentioned activity referred to in subsection (1) (b) subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL (1); or
- (b) where the notification relates to a matter referred to in subsection (1) (c) —
 - (i) to dispose of the shareholding referred to in subsection (1) (c); or
 - (ii) to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL (1),

and the approved holding company shall comply with such directions.

[1/2005]

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

[1/2005]

Obligation to submit periodic reports

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

[1/2005]

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

[1/2005]

Obligation to assist Authority

81ZC.—(1) An approved holding company shall provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of —

- (a) such books and other information relating to the activities of the approved holding company; and
- (b) such other information,

as the Authority may require for the proper administration of this Act.

[1/2005]

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

[1/2005]

Obligation to maintain confidentiality

81ZD.—(1) Subject to subsection (2), an approved holding company and its officers and employees shall maintain, and aid in maintaining, the confidentiality of all user information that —

- (a) comes to the knowledge of the approved holding company or any of its officers or employees; or
- (b) is in the possession of the approved holding company or any of its officers or employees.

[1/2005]

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

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or furnished; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[1/2005]

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

[1/2005]

(4) For the avoidance of doubt, nothing in this section shall be construed as preventing an approved holding company from entering into a written agreement with a user which obliges the approved holding company to maintain a higher degree of confidentiality than that specified in this section.

[1/2005]

Control of substantial shareholding in approved holding companies

81ZE.—(1) No person shall enter into any agreement to acquire shares in an approved holding company by virtue of which he would, if the agreement had been carried out, become a substantial shareholder of the approved holding company without first obtaining the approval of the Authority to enter into the agreement.

[1/2005]

(2) No person shall become —

(a) a 12% controller; or

(b) a 20% controller,

of an approved holding company without first obtaining the approval of the Authority.

[1/2005]

(3) In subsection (2) —

“12% controller” means a person, not being a 20% controller, who alone or together with his associates —

(a) holds not less than 12% of the shares in the approved holding company; or

(b) is in a position to control not less than 12% of the votes in the approved holding company;

“20% controller” means a person who, alone or together with his associates —

(a) holds not less than 20% of the shares in the approved holding company; or

(b) is in a position to control not less than 20% of the votes in the approved holding company.

[1/2005]

(4) In this section —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section 7 (6) to (10) of the Companies Act (Cap. 50);
or

(ii) he otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7 (6) to (10) of the Companies Act;

(b) a reference to the control of a percentage of the votes in an approved holding company shall be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the approved holding company; and

(c) a person, *A*, is an associate of another person, *B*, if —

(i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of *B*;

(ii) *A* is a corporation 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 *B*, or where *B* is a corporation, of the directors of *B*;

(iii) *B* is a corporation 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 *A*, or where *A* is a corporation, of the directors of *A*;

(iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(v) *B* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *A*;

(vi) *A* is a related corporation of *B*;

- (vii) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *A*;
- (viii) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *B*; or
- (ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved holding company.

[1/2005]

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

[1/2005]

(6) Without prejudice to subsection (11), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by notice in writing, direct the transfer or disposal of all or any of the shares of an approved holding company in which a substantial shareholder, 12% controller or 20% controller of the approved holding company has an interest.

[1/2005]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and notwithstanding any thing to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association or other constituent document or documents of the approved holding company —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the approved holding company shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

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

[1/2005]

(8) Any issue of shares by an approved holding company in contravention of subsection (7) (b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (6) shall immediately return those shares to the approved holding company, upon which the approved holding company shall return to the person any payment received from him in respect of those shares.

[1/2005]

(9) Any payment made by an approved holding company in contravention of subsection (7) (c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (6) shall immediately return the payment he has received to the approved holding company.

[1/2005]

(10) The Authority may exempt —

(a) any person or class or persons; or

(b) any class or description of shares or interests in shares, from the requirement under subsection (1) or (2), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(11) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), 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.

[1/2005]

(12) Any person who contravenes subsection (7) (b) or (c), (8) or (9) or any direction issued by the Authority under 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.

[1/2005]

Approval of chairman, chief executive officer, director and key persons

81ZF.—(1) An approved holding company shall ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

[1/2005]

(2) No approved holding company shall appoint a person as its chairman, chief executive officer or director unless the approved holding company has obtained the approval of the Authority.

[1/2005]

(3) The Authority may, by notice in writing, require an approved holding company to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved holding company and the approved holding company shall comply with the notice.

[1/2005]

(4) An application for approval under subsection (2) or (3) shall be made in such form and manner as the Authority may prescribe.

[1/2005]

(5) Without prejudice to the generality of section 81ZK and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (2) or (3), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

[1/2005]

(6) Subject to subsection (7), the Authority shall not refuse an application for approval under this section without giving the approved holding company an opportunity to be heard.

[1/2005]

(7) The Authority may refuse an application for approval on any of the following grounds without giving the approved holding company an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

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

[1/2005]

(9) An approved holding company shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairman, chief executive officer, director or person referred to in the notice issued by the Authority under subsection (3).

[1/2005]

(10) Without prejudice to the generality of section 81ZK, the Authority may make regulations relating to the composition and duties of the board of directors or any committee of an approved holding company.

[1/2005]

(11) In this section, “committee” includes any committee of directors, disciplinary committee, appeals committee or any body responsible for disciplinary action against a member of an approved exchange or a designated clearing house of which an approved holding company is the holding company.

[1/2005]

(12) The Authority may exempt an approved holding company or a class of approved holding companies from the requirement under subsection (1), (2) or (9), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(13) Any approved holding company which contravenes subsection (1), (2), (3) or (9) 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.

[1/2005]

Listing of approved holding companies on securities market

81ZG.—(1) The securities of an approved holding company shall not be listed for quotation on a securities market that is operated by any of its related corporations unless the approved holding company and the operator of the securities market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and

- (b) for the purpose of ensuring the integrity of trading of the securities of the approved holding company.

[1/2005]

(2) Where the securities of an approved holding company are listed for quotation on a securities market operated by any of its related corporations, the listing rules of the securities market shall be deemed to allow the Authority to act in place of the operator of the securities market in making decisions and taking action, or to require the operator of the securities market to make decisions and to take action on behalf of the Authority, on —

- (a) the admission to, or removal of, the approved holding company from the official list of the securities market; and
- (b) granting, stopping or suspending the securities of the approved holding company from being listed for quotation or quoted on the securities market.

[1/2005]

(3) The Authority may, by notice in writing to the operator of the securities market —

- (a) modify the listing rules of the securities market for the purpose of their application to the listing for quotation or trading of the securities of the approved holding company; or
- (b) waive the application of any listing rule of the securities market to the approved holding company.

[1/2005]

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

[1/2005]

Additional powers of Authority in respect of auditors

81ZH.—(1) If an auditor of an approved holding company, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved holding company to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or

- (c) any irregularity that has or may have a material effect upon the accounts of the approved holding company, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

[1/2005]

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

[1/2005]

(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor has, apart from this section, as a defendant in an action for defamation.

[1/2005]

(4) The Authority may impose all or any of the following duties on an auditor of an approved holding company:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the approved holding company;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

[1/2005]

(5) The approved holding company shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

[1/2005]

[E (DM) A, s. 16]

Power of Authority to exempt approved holding companies from provisions of this Part

81ZI. The Authority may exempt an approved holding company or a class of approved holding companies from any of the provisions of this Part, if it is satisfied that the non-compliance by such approved holding company or class of approved holding companies with such provision

would not detract from the objectives specified in section 81T, subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

Power of Authority to remove officers

81ZJ.—(1) Where the Authority is satisfied that an officer of an approved holding company —

- (a) has wilfully contravened or wilfully caused that approved holding company to contravene this Act;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act by that approved holding company;
- (c) has failed to discharge the duties or functions of his office or employment;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

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

[1/2005]

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved holding company has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1) (c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

[1/2005]

(3) Subject to subsection (4), the Authority shall not direct an approved holding company to remove an officer from his office or employment without giving the approved holding company an opportunity to be heard.

[1/2005]

(4) The Authority may direct an approved holding company to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the approved holding company an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(5) Where the Authority directs an approved holding company to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

[1/2005]

(6) Any approved holding company that is aggrieved by a direction of the Authority made in relation to the approved holding company under subsection (1) may, within 30 days after the approved holding company is notified of the direction, appeal to the Minister whose decision shall be final.

[1/2005]

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

[1/2005]

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

[1/2005]

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by an approved holding company in respect of any thing done or omitted to be done with reasonable care and in good faith

in the discharge or purported discharge of its obligations under this section.

[1/2005]

(10) Any approved holding company which, without reasonable excuse, contravenes a written notice issued under subsection (1) 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.

[1/2005]

Power of Authority to make regulations

81ZK.—(1) Without prejudice to section 341, the Authority may make regulations relating to the approval of, and the requirements applicable to, persons who establish, operate, or assist in establishing or operating approved holding companies.

[1/2005]

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for penalties not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[1/2005]

Power of Authority to issue directions

81ZL.—(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring fair, orderly and transparent markets;
- (b) for ensuring safe and efficient clearing facilities;
- (c) for ensuring the integrity and stability of the capital markets or the financial system;
- (d) in the interests of the public or a section of the public or for the protection of investors;
- (e) for the effective administration of this Act; or
- (f) for ensuring compliance with any condition or restriction as may be imposed by the Authority under section 81W (1)

or (2), 81ZA (2), 81ZE (5) or (10), 81ZF (12) or 81ZI, or such other obligations or requirements under this Act or as may be prescribed by the Authority, issue directions by notice in writing either of a general or specific nature to an approved holding company, and the approved holding company shall comply with such directions.

[1/2005]

(2) Any approved holding company which, without reasonable excuse, contravenes a direction issued under subsection (1) 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.

[1/2005]

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

[1/2005]

[SIA, s 2I; E (DM) A, s. 14]

PART IV

CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVE'S LICENCE

Division 1 — Licensing

Need for capital markets services licence

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

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

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

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

Need for representative's licence

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

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

[1/2005]

(2) Subsection (1) shall not apply —

- (a) to any person who acts as a representative of an exempt person, in so far as —
 - (i) the type and scope of regulated activity carried out by the first-mentioned person are within the type and scope of, or are the same as, those carried out by the exempt person (in his capacity as an exempt person); and
 - (ii) the manner in which the first-mentioned person carries out the regulated activity referred to in subsection (1) is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out the regulated activity; and
- (b) to any person or class of persons whom the Authority may exempt from holding a representative's licence in respect of any regulated activity.

[1/2005]

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

[SIA, s. 25 and s. 27; FTA, s. 12]

Application for grant or renewal of licence

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

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

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

[1/2005]

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

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

[16/2003]

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

[16/2003]

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

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

[16/2003]

(5B) An application for the renewal of a representative's licence in respect of any regulated activity shall be deemed to be withdrawn

with effect from the date on which the person who supported the application withdraws his support in writing.

[16/2003]

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

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

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

[16/2003]

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

Licence fee

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

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

- (a) the licence is revoked or suspended, or lapses during the period to which the licence fee relates;
- (b) the licence fee is paid in relation to an application for the renewal of a licence and such application is withdrawn after the date on which, but for its renewal, the licence would have expired;
- (c) the licensed person —
 - (i) being the holder of a capital markets services licence, ceases to carry on business in that regulated activity; or
 - (ii) being a representative, ceases to act as a representative in respect of that regulated activity,during the period to which the licence fee relates; or

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

[1/2005]

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

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

Grant of capital markets services licence

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

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

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

[1/2005]

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

- (a) the applicant has not provided the Authority with such information or documents relating to it or any person employed by or associated with it for the purposes of its business, and to any circumstances likely to affect its manner of conducting business, as the Authority may require;
- (aa) any information or document that is furnished by the applicant to the Authority is false or misleading;
- (b) the applicant or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (c) execution against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (d) a receiver, a receiver and manager, judicial manager or an equivalent person has been appointed whether in Singapore

- or elsewhere in relation to, or in respect of, any property of the applicant or its substantial shareholder;
- (e) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
 - (f) the applicant or its substantial shareholder, or any officer of the applicant —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
 - (g) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform in connection with the holding of the licence;
 - (h) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its officers, employees and substantial shareholders are fit and proper persons;
 - (i) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers or customers having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;
 - (j) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant's business is to be conducted;
 - (k) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
 - (l) there are other circumstances which are likely to —
 - (i) lead to the improper conduct of business by the applicant, any of its officers, employees or substantial shareholders; or
 - (ii) reflect discredit on the manner of conducting the business of the applicant or its substantial shareholders;

- (m) the Authority has reason to believe that the applicant, or any of its officers or employees, will not perform the functions for which the applicant seeks to be licensed, efficiently, honestly or fairly; or
- (n) the Authority is of the opinion that it would be contrary to the interests of the public to grant or renew the licence.

[16/2003; 1/2005]

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

[1/2005]

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

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

[16/2003]

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

Grant of representative's licence

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

[16/2003; 1/2005]

- (2) In granting a representative's licence, the Authority shall —
 - (a) specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate; and
 - (b) relate the licence to the holder of a capital markets services licence which supported that application for a representative's licence.

[16/2003]

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

- (a) the applicant has not provided the Authority with such information or documents relating to him as the Authority may require;
- (aa) any information or document that is furnished by the applicant to the Authority is false or misleading;
- (b) the applicant is an undischarged bankrupt whether in Singapore or elsewhere;
- (c) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (d) the applicant has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) the applicant —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (f) the Authority is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties he is to perform in connection with the holding of the licence;
- (g) the applicant fails to satisfy the Authority that he is a fit and proper person to be licensed;
- (h) the Authority has reason to believe that the applicant may not be able to act in the best interests of the subscribers or customers of a holder of a capital markets services licence having regard to his reputation, character, financial integrity and reliability;
- (i) the Authority is not satisfied as to the financial standing of the applicant;
- (j) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to

the nature of the duties which he may perform in connection with the holding of the licence;

- (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business;
- (l) the applicant is in arrears in the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);
- (m) the Authority has reason to believe that the applicant will not perform the functions for which he seeks to be licensed, efficiently, honestly or fairly; or
- (n) the Authority is of the opinion that it would be contrary to the interests of the public to grant or renew the licence.

[16/2003; 1/2005]

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

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

- (a) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the applicant has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[16/2003]

(6) In this section, "representative's licence" does not include a temporary representative's licence.

[16/2003]

[SIA, s. 30; FTA, s. 14]

Temporary representative's licence

87A.—(1) An individual may apply to the Authority in such form and manner as the Authority may prescribe for a temporary

representative's licence to act as a representative in respect of one or more regulated activities.

[16/2003; 1/2005]

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

[1/2005]

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

[16/2003]

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

[16/2003]

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

[16/2003]

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

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

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

[16/2003]

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

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

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

[16/2003]

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

[16/2003]

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

[16/2003]

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

[16/2003]

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

[16/2003]

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

- (a) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the applicant has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[16/2003]

Power of Authority to impose conditions or restrictions

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

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

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

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

Period of licence

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

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

(3) In this section —

“licence” does not include a temporary representative’s licence;

“licensed person” does not include a holder of a temporary representative’s licence.

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

[16/2003]

Variation of licence

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

[16/2003]

(1A) The Authority may require an applicant to supply the Authority with such information or documents as it considers necessary in relation to the application.

[16/2003]

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

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

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

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

- (ii) the holder of a capital markets services licence which has applied under subsection (1) to add to its licence that regulated activity,

as may be specified by the Authority.

[16/2003]

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

- (a) withdraws its support in writing;
- (b) withdraws its application to add to its licence that regulated activity; or
- (c) has its application to add to its licence that regulated activity refused by the Authority.

[16/2003]

(3) The Authority may —

- (a) approve the application subject to such conditions or restrictions as the Authority thinks fit; or
- (b) refuse the application on any of the grounds set out in section 86 (4), 87 (3) or 87A (10).

[16/2003]

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

[16/2003]

Deposit to be lodged in respect of capital markets services licence

91.—(1) The Authority may, in granting, renewing or varying a capital markets services licence, require the applicant to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount in cash or in such other form as the Authority may prescribe in respect of that licence.

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

[SIA, s. 34]

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

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

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

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

[SIA, s. 31; FTA, s. 18]

[1/2005]

Notification of change of particulars

93.—(1) Where —

- (a) the holder of a capital markets services licence ceases to carry on business in any of the regulated activities to which the licence relates;
- (b) the holder of a representative's licence ceases to act as a representative of the principal in relation to whom the representative's licence was issued; or
- (c) a change occurs in any matter particulars of which are required by section 94 to be entered in the register of licensed persons in relation to the licensed person,

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

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

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

[16/2003]

Register of licensed persons

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

- (a) in relation to the holder of a capital markets services licence —
 - (i) its name;
 - (ii) the address of the principal place of business at which it carries on the business in respect of which the licence is held;

- (iii) the regulated activity or activities to which its licence relates;
 - (iv) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
 - (v) such other information as may be prescribed;
- (b) in relation to the holder of a representative's licence —
 - (i) his name;
 - (ii) the name of his principal in relation to whom the licence was granted;
 - (iii) the regulated activity or activities to which his licence relates;
 - (iv) where the business of his principal is carried on under a name or style, other than the name of the principal, the name or style under which that business is carried on; and
 - (v) such other information as may be prescribed.

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

Lapsing, revocation and suspension of licence

95.—(1) A licence shall lapse —

- (a) in the case of a holder of a capital markets services licence, if the holder is wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (b) in the case of a holder of a representative's licence, if the representative dies; and
 - (c) in the event of such other occurrence or in such other circumstances as may be prescribed.
- (2) The Authority may revoke a licence —
- (a) in the case of a holder of a capital markets services licence, if —
 - (i) there exists a ground on which the Authority may refuse an application under section 86;
 - (ii) it fails or ceases to carry on the business in all the regulated activities for which it was licensed;

- (iii) the Authority has reason to believe that the holder of the capital markets services licence, or any of its officers or employees, has not performed its duties efficiently, honestly or fairly;
 - (iv) the holder of the capital markets services licence contravenes any condition or restriction applicable in respect of its licence, any direction issued to it by the Authority under this Act, or any other provision in this Act;
 - (v) the Authority has reason to believe that the holder of the capital markets services licence is carrying on business in any regulated activity for which it was licensed in a manner that is contrary to the interests of the public; or
 - (vi) any information or document that is furnished by the holder of the capital markets services licence to the Authority is false or misleading; and
- (b) in the case of a representative, if —
- (i) there exists a ground on which the Authority may refuse an application under section 87 or 87A (as the case may be);
 - (ii) he fails or ceases to act as a representative in respect of all the regulated activities for which he was licensed;
 - (iii) the licence of his principal is revoked;
 - (iv) the Authority has reason to believe that he has not performed his duties efficiently, honestly or fairly;
 - (iva) the Authority has reason to believe that the representative is performing his functions in a manner that is contrary to the interests of the public;
 - (v) he contravenes any condition or restriction applicable in respect of his licence, any direction issued to him by the Authority under this Act or any other provision in this Act; or
 - (vi) any information or document that is furnished by the representative to the Authority is false or misleading.

[16/2003; 1/2005]

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

- (a) suspend a licence for a specific period instead of revoking it under subsection (2); and
- (b) at any time extend or revoke the suspension.

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

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

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

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

- (b) in the case of a representative's licence, on any of the following grounds:

- (i) the licensed person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (ii) the licensed person has been convicted, whether in Singapore or elsewhere, of an offence —
 - (A) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (B) punishable with imprisonment for a term of 3 months or more.

[16/2003]

(6) Without prejudice to subsections (2) and (3), the Authority may, on any ground described in subsection (2), issue an order prohibiting the licensed person from performing one or more of the regulated

activities to which its licence relates and the order may be permanent or for such period as may be determined by the Authority (referred to in this Division as a prohibition order).

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

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

- (a) in the case of a revocation of its licence, immediately inform all its representatives by notice in writing of such revocation and the representatives who are so informed shall cease to act as representatives of that holder;
- (b) in the case of a suspension of its licence, immediately inform all its representatives by notice in writing of such suspension and the representatives who are so informed shall cease to act as representatives of that holder during the period of the suspension; and
- (c) in the case of a prohibition order, immediately inform all its representatives who perform the regulated activity or activities to which the prohibition order relates, by notice in writing of such prohibition order and the representatives who are so informed shall cease to perform such regulated activity or activities during the period specified in the prohibition order.

(9) Any licensed person who —

- (a) performs a regulated activity while its licence has lapsed or has been revoked or suspended, or in breach of a prohibition order; or
- (b) contravenes subsection (8),

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

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

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person,

whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or lapsing of the licence or the issue of the prohibition order, as the case may be; or

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

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

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

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

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

unless it has obtained the approval of the Authority.

[16/2003]

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

[16/2003]

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

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

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

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[16/2003]

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

Removal of officer of holder of capital markets services licence

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

- (a) has wilfully contravened or wilfully caused that holder to contravene this Act;
- (b) has without reasonable excuse failed to enforce compliance with this Act;
- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public, or section of the public or for the protection of investors direct by notice in writing that holder to remove the officer from office or employment,

and that holder shall comply with such notice notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

[1/2005]

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

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

[1/2005]

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

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence —
 - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

[16/2003]

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

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

- (a) a holder of a capital markets services licence; or
- (b) any person acting on behalf of the holder of a capital markets services licence,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

Appeals

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

- (a) the refusal of the Authority to grant, renew or vary a licence;
- (b) the revocation or suspension of a licence by the Authority;
- (c) the issue of a prohibition order by the Authority;
- (d) the refusal of the Authority to grant an approval to a holder of a capital markets services licence to appoint a person as its chief executive officer or director; or
- (e) the direction of the Authority to a holder of a capital markets services licence to remove an officer from office or employment,

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

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

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

*Division 2 — Exemptions***Exemptions from requirement to hold capital markets services licence**

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

- (a) any bank licensed under the Banking Act (Cap. 19) in respect of any regulated activity;
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of any regulated activity which it is approved to carry out under that Act;
- (c) any finance company licensed under the Finance Companies Act (Cap. 108) in respect of any regulated activity that is not prohibited by that Act or for which an exemption from section 25 (2) of that Act has been granted;
- (d) any company or society registered under the Insurance Act (Cap. 142) in respect of fund management for the purpose of carrying out insurance business;

- (e) *(Deleted by Act 1/2005)*
- (f) any securities exchange, futures exchange, recognised market operator or approved holding company in respect of any regulated activity that is solely incidental to its operation of a securities market or futures market or to its performance as an approved holding company, as the case may be;
- (g) any designated clearing house in respect of any regulated activity that is solely incidental to its operation of a clearing facility; and
- (h) such other person or class of persons in respect of any regulated activity as may be exempted by the Authority.

[16/2003; 1/2005]

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

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

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

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

[1/2005]

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

- (a) if it contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (4);
- (b) if it contravenes any direction issued to it under section 101 (1); or
- (c) if the Authority considers that it is carrying on business in a manner that is, in the opinion of the Authority, contrary to the public interest.

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

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

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the person, whether the agreement, transaction or arrangement was entered into before or after, the withdrawal of the exemption; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

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

Annual fees payable by exempt person and its representative

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

[1/2005]

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

- (a) in the case of the exempt person —
 - (i) its exemption is withdrawn; or
 - (ii) it fails or ceases to carry on business in that regulated activity,during the period to which the annual fee relates; and
- (b) in the case of a representative of the exempt person —
 - (i) his exemption is withdrawn; or
 - (ii) he fails or ceases to act as a representative in respect of that regulated activity,during the period to which the annual fee relates.

[1/2005]

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

[1/2005]

Division 3 — General

Power of Authority to make regulations

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

(2) Regulations made under this section may provide —

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

[16/2003]

Power of Authority to issue written directions

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

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

- (a) the standards to be maintained by the person concerned in the conduct of his business;
- (b) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and
- (c) the qualifications, experience and training of representatives, and the person to whom such direction is issued shall comply with the direction.

[16/2003]

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

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

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

PART V

BOOKS, CUSTOMER ASSETS AND AUDIT

Division 1 — Books

Keeping of books and furnishing of returns

102.—(1) A holder of a capital markets services licence shall —

- (a) keep, or cause to be kept, such books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time; and
- (b) keep, or cause to be kept, such books in such a manner as will enable them to be conveniently and properly audited.

(2) An entry in the books of a holder of a capital markets services licence required to be kept in accordance with this section shall be deemed to have been made by, or with the authority of, the holder.

(3) A holder of a capital markets services licence shall retain such books as may be required to be kept under this Act for a period of not less than 6 years.

(4) A holder of a capital markets services licence shall —

- (a) furnish such returns and records in such form and manner as may be prescribed or as may be notified by the Authority in writing; and
- (b) provide such information relating to its business as the Authority may require.

(5) The Authority may, without prejudice to section 341, make regulations in respect of all or any of the matters in this Division,

including the keeping of such books, by a holder of a capital markets services licence, in such form and manner as the Authority may prescribe.

[SIA, s. 63 and s. 67; FTA, s. 34 (1)]

Penalties under this Division

103. A holder of a capital markets services licence which, without reasonable excuse, contravenes section 102 (1), (3) or (4) or any regulation made under section 102 (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

[SIA, s. 57 (7); FTA, s. 25 (6)]

Division 2 — Customer Assets

Interpretation of this Division

103A. In this Division, unless the context otherwise requires, “money or other assets” means money received or retained by, or any other asset deposited with, a holder of a capital markets services licence in the course of its business for which it is liable to account to its customer, and any money or other assets accruing therefrom.

[16/2003]

Handling of customer assets

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

- (a) do so on the basis that the money or other assets shall be applied solely for such purpose as may be agreed to by the customer, when or before it receives the money or other assets;
- (b) pending such application, pay or deposit the money or other assets in such manner as may be prescribed; and
- (c) record and maintain a separate book entry for each customer in accordance with the provisions of this Act in relation to that customer’s money or other assets.

[16/2003]

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

[SIA, s. 64; FTA, s. 37]

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

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

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

[16/2003]

Penalties under this Division

105. Any holder of a capital markets services licence which, without reasonable excuse, contravenes section 104 (1) or any regulation made under section 104 (2), shall be guilty of an offence and shall be liable on conviction —

- (a) where it is found to have committed the offence with intent to defraud, 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; or
- (b) in any other case, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

[SIA, s. 59, 65 (6) and (7)]

Division 3 — Audit

Appointment of auditors

106. A holder of a capital markets services licence shall appoint an auditor to audit its accounts and where, for any reason, the auditor

ceases to act for such holder, the holder shall, as soon as practicable thereafter, appoint another auditor.

[SIA, s. 69 (1) (a); FTA, s. 26]

Lodgment of annual accounts, etc.

107.—(1) A holder of a capital markets services licence shall, in respect of each financial year —

- (a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and
- (b) lodge that account and balance-sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with an auditor's report on the account and balance-sheet.

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a holder of a capital markets services licence to the Authority and the Authority is satisfied that there is any special reason for requiring the extension, the Authority may extend that period by not more than 4 months, subject to such conditions or restrictions as the Authority may think fit to impose.

(3) Any holder of a capital markets services licence which contravenes subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 for every day or part thereof that the lodgment is late, subject to a maximum fine of \$50,000.

(4) Any holder of a capital markets services licence which contravenes any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(5) Notwithstanding any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a holder of a capital markets services licence —

- (a) at any time direct the holder to remove the auditor; and
- (b) direct the holder, as soon as practicable thereafter, to appoint another auditor,

and the holder shall comply with such direction.

[SIA, s. 69 (1) (b); FTA, s. 27]

Reports by auditor to Authority in certain cases

108. Where, in the performance of his duties as an auditor for a holder of a capital markets services licence, an auditor becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the holder to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including any irregularity that may affect or jeopardise the moneys or other assets of any customer of the holder,

the auditor shall immediately thereafter send —

- (i) a report in writing of the matter or irregularity to the Authority; and
- (ii) where the holder is a member of a securities exchange or futures exchange, a copy of the report to the securities exchange or futures exchange, as the case may be.

[SIA, s. 70 (1); FTA, s. 28]

Power of Authority to appoint auditor

109.—(1) Where —

- (a) a holder of a capital markets services licence fails to lodge an auditor's report under section 107; or
- (b) the Authority receives a report under section 108,

the Authority may, without prejudice to its powers under section 115, if it is satisfied that it is in the interests of the holder, the customers of the holder or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the holder.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the holder of a capital markets services licence, the Authority may, in writing, direct the holder to pay

a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a holder of a capital markets services licence fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) shall, on the conclusion of the examination and audit, submit a report to the Authority.

[FTA, s. 29]

Power of auditors appointed by Authority

110.—(1) An auditor appointed by the Authority under section 109 may, for the purpose of carrying out an examination and audit of the books of a holder of a capital markets services licence —

- (a) examine, on oath or affirmation, any officer, employee or agent of the holder or any other auditor appointed under this Act in relation to those books;
- (b) require any officer, employee or agent of the holder, or any other auditor appointed under this Act, to produce any of the books held by or on behalf of the holder relating to its business, and to make copies of or take extracts from, or retain possession of, such books for such period as is necessary to enable them to be inspected;
- (c) require a securities exchange, futures exchange or designated clearing house to produce any of the books kept by it, or any information in its possession, relating to the business of the holder;
- (d) employ such persons as he considers necessary to assist him in carrying out the examination and audit; and
- (e) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could do as an auditor under this subsection, other than the examination of any person on oath or affirmation.

[1/2005]

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 109 or a person

authorised under subsection (1) (e), 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.

[SIA, s. 70 (4) and (5); FTA, s. 30]

Offence to destroy, conceal, alter, etc., books

111.—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under this Division —

- (a) destroys, conceals or alters any book relating to the business of a holder of a capital markets services licence; or
- (b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of a holder of a capital markets services licence,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence —

- (a) destroyed, concealed or altered any book referred to in subsection (1) (a); or
- (b) sent, or conspired to send, out of Singapore, any book or asset referred to in subsection (1) (b),

the onus of proving that, in so doing, he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Division shall lie on him.

[SIA, s. 71; FTA, s. 31]

Safeguarding of books

112.—(1) A holder of a capital markets services licence shall take reasonable precautions —

- (a) to prevent falsification of the books required to be kept by it under this Act; and
- (b) to facilitate the discovery of any falsification of any such book.

(2) Any holder of a capital markets services licence who contravenes this section shall be guilty of an offence under this Act.

[SIA, s. 72]

Restriction on auditor's and employee's right to communicate certain matters

113. Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 109 or carrying out any duty imposed under section 115, and any employee of such an auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

- (a) the Authority; and
- (b) in the case of an employee of such auditor, the auditor.

[FTA, s. 32]

Exchanges, etc., may impose additional obligations on members

114. Nothing in this Division shall prevent a securities exchange, futures exchange or designated clearing house from imposing on its members any additional obligation or requirement which it thinks is necessary with respect to —

- (a) the audit of accounts;
- (b) the information to be given in reports by auditors; or
- (c) the keeping of books.

[SIA, s. 73; FTA, s. 33]

[1/2005]

Additional powers of Authority in respect of auditors

115.—(1) The Authority may impose all or any of the following duties on an auditor of a holder of a capital markets services licence:

- (a) a duty to submit to the Authority such additional information in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of his audit of the business and affairs of the holder;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (b) and (c),

and the auditor shall carry out such additional duty or duties.

(2) A holder of a capital markets services licence shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Authority may impose under subsection (1).

[SIA, s. 70 (3); FTA, s. 35]

Defamation

116.—(1) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties under this Part; or
- (b) the submission of any report to the Authority under section 108, 109 (4) or 115 (1) (d).

(2) Subsection (1) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

[FTA, s. 36]

PART VI

CONDUCT OF BUSINESS

Division 1 — General

Certain representations prohibited

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

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

[SIA, s. 48]

Issue of contract notes

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

- (a) give to the other party to the transaction a contract note which contains such information as may be prescribed; or
- (b) procure that such a contract note be given in its name.

[SIA, s. 49]

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

Disclosure of certain interests in respect of underwriting agreement

120.—(1) Where —

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

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

- (i) make an offer to sell those securities otherwise than in the ordinary course of trading on a securities exchange or recognised market operator; or
- (ii) make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to those securities,

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

[1/2005]

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

[1/2005]

(3) Where the holder of a capital markets services licence sends to any person a written offer, written recommendation or written statement to which subsection (1) applies, the holder shall retain a copy of the written offer, recommendation or statement for a period of

6 years after the day the written offer, recommendation or statement is made.

[1/2005]

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

[1/2005]

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

[1/2005]

[SIA, s. 50]

121. (Repealed by Act 1/2005)

Priority to customers' orders

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

- (a) the holder of a capital markets services licence to deal in securities or trade in futures contracts when acting as principal or on behalf of a person associated with or connected to the holder; or
- (b) a representative of such a holder when acting for his own account or on behalf of a person associated with or connected to the representative,

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

[1/2005]

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

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

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

[1/2005]

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

[SIA, s. 54; FTA, s. 37A]

Power of Authority to make regulations

123.—(1) The Authority may make regulations in respect of the conduct of business in any regulated activity by the holder of a capital markets services licence or a representative of such a holder.

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

- (a) specify requirements applicable to the holder of a capital markets services licence in relation to securities financing;
- (aa) specify requirements and restrictions relating to the granting of unsecured advance, unsecured loan or unsecured credit facility by the holder of a capital markets services licence;
- (b) prohibit the use of misleading or deceptive advertisements by or on behalf of the holder of a capital markets services licence, and impose conditions or restrictions for the use of advertisements by or on behalf of the holder;
- (c) specify terms and conditions to be included in customer contracts and provide that the terms and conditions are, unless the Authority in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the customer contracts in which they are included, whether or not a different intention appears in the provisions of the customer contracts;
- (d) specify information that the holder of a capital markets services licence is to provide to its customer on entering into a customer contract with the customer, and thereafter from time to time on request by the customer, concerning the business of the holder and the identity and status of any person acting on behalf of the holder with whom the customer may have contact;

- (e) require the holder of a capital markets services licence, and a representative of such a holder, to ascertain, in relation to each customer of the holder, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the holder, and specify the steps to be taken for this purpose;
- (f) require the holder of a capital markets services licence, and a representative of such a holder, when providing information or advice concerning capital markets products to a customer of the holder, to ensure the suitability of the information or advice to be provided to the customer, and specify the steps to be taken for this purpose;
- (g) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder the financial risks in relation to capital markets products that the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;
- (h) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder any commission or advantage the holder or the representative, as the case may be, receives or is to receive from a third party in connection with any capital markets products which the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;
- (i) prohibit the holder of a capital markets services licence and a representative of such a holder from effecting a transaction on behalf of a customer of the holder except in specified circumstances;
- (j) specify the circumstances in which, and the conditions under which, the holder of a capital markets services licence, and a representative of such a holder, may use information relating to the affairs of the customer of the holder;
- (k) require the holder of a capital markets services licence, and a representative of such a holder, to take steps to avoid cases of conflict between any of their interests and those of a customer of the holder, and specify the steps to be taken in the event of a potential or actual case of conflict;

- (l) specify the circumstances in which the holder of a capital markets services licence may receive any property or service from another holder of a capital markets services licence in consideration of directing business to that other holder;
- (m) specify the circumstances in which, and the conditions and restrictions under which, a representative of the holder of a capital markets services licence is permitted to deal or trade for his own account in securities or futures contracts;
- (n) provide for any other matter relating to the practices and standards of conduct of the holder of a capital markets services licence and a representative of such a holder in carrying on business in any regulated activity; and
- (o) provide that, subject to such conditions or restrictions as may be prescribed, all or specified provisions of this Part shall not apply to a specified class of holders of a capital markets services licences or their representatives, or to a specified class of capital markets products.

[1/2005]

(3) Regulations made under this section may provide that any customer contract entered into by the holder of a capital markets services licence with its customer otherwise than in compliance with any specified regulation is, notwithstanding anything in the contract, unenforceable at the option of the customer.

(4) Regulations made under this section may provide —

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

[16/2003]

(5) In this section, “customer contract” means any contract or arrangement between the holder of a capital markets services licence and a customer of the holder which contains terms on which the holder is to provide services to, or effect transactions for, the customer.

[HK SF Bill, Clause 163]

Penalties under this Division

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

[1/2005]

*Division 2 — Securities***Dealings as principal**

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

[16/2003]

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

[16/2003]

(3) (*Deleted by Act 16/2003*)

(4) Subsection (1) shall not apply to a transaction of sale or purchase of an odd lot of securities that is entered into by the holder of a capital markets services licence to deal in securities which is a member of a securities exchange or recognised market operator and specialises in transactions relating to odd lots of securities.

[1/2005]

(5) Where the holder of a capital markets services licence to deal in securities fails to comply with subsection (1) or (2) in respect of a contract for the sale of securities by the holder, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission given in writing to the holder not later than 30 days after the receipt of the contract note.

(6) Where the holder of a capital markets services licence fails to comply with subsection (1) or (2) in respect of a contract for the

purchase of securities by the holder, the vendor of the securities may, in like manner, rescind the contract.

(7) Nothing in subsection (5) or (6) shall affect any right that a person has apart from those subsections.

(8) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(9) For the purposes of this section —

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

- (i) a person associated with or connected to the holder;
- (ii) a corporation in which the holder has a controlling interest; or
- (iii) a corporation in which the holder's interest and the interests of the directors of the holder together constitute a controlling interest; and

(b) a reference to securities is a reference to securities which are permitted to be traded on the securities market of —

- (i) a securities exchange;
- (ii) an overseas securities exchange; or
- (iii) a recognised market operator.

[SIA, s. 52]

[16/2003; 1/2005]

Division 3 — Futures Contracts and Leveraged Foreign Exchange Trading

Trading against customer

126. The holder of a capital markets services licence to trade in futures contracts shall not knowingly enter into a transaction to buy from or sell to its customer any futures contract for —

- (a) the holder's own account;
- (b) an account of a person associated with or connected to it; or
- (c) an account in which the holder has an interest,

except with the customer's prior consent and in accordance with the business rules and practices of a futures exchange or recognised market operator.

[FTA, s. 37B]

[1/2005]

Cross-trading

127. The holder of a capital markets services licence to trade in futures contracts shall not knowingly fill or execute a customer's order for the purchase or sale of a futures contract on a futures market by off-setting against the order or orders of any other person, without effecting such a purchase or sale either —

- (a) on the trading floor or electronic futures trading system; or
- (b) in accordance with the business rules and practices of a futures exchange or recognised market operator.

[FTA, s. 37C]

[1/2005]

Risk disclosure by certain persons

128.—(1) The holder of a capital markets services licence to trade in futures contracts or carry out leveraged foreign exchange trading shall not open a futures trading account or leveraged foreign exchange trading account for a customer unless he —

- (a) furnishes the customer with a separate written risk disclosure document which shall be in such form and contain such information as the Authority may prescribe; and
- (b) receives from the customer an acknowledgment signed and dated by the customer that he has received and understood the nature and contents of the risk disclosure document.

(2) The holder of a capital markets services licence for fund management shall not solicit or enter into an agreement with a prospective customer for the purpose of —

- (a) managing the customer's futures trading account or foreign exchange trading account; or
- (b) guiding the customer's futures trading account or foreign exchange trading account,

by means of a systematic programme that recommends specific transactions unless, at or before the time the holder engages in the solicitation or enters into the agreement (whichever is the earlier), the holder —

- (i) delivers or causes to be delivered to the prospective customer a risk disclosure document in respect of that purpose which shall be in such form and contain such information as the Authority may prescribe; and
- (ii) receives from the prospective customer an acknowledgment signed and dated by him that he has received and understood the nature and contents of the risk disclosure document.

(3) Subsection (2) shall not apply to collective investment schemes that are approved under Division 2 of Part XIII.

[FTA, s. 39]

Penalties under this Division

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

[FTA, s. 40]

PART VII

DISCLOSURE OF INTERESTS

Division 1 — Registers of Interests in Securities

Application of this Division

130.—(1) This Division shall apply to any relevant person.

(2) In this Division —

(a) “relevant person” means —

- (i) a holder of a capital markets services licence to deal in securities and a representative of such a holder;
- (ii) a holder of a capital markets services licence to advise on corporate finance and a representative of such a holder; or
- (iii) a holder of a capital markets services licence for fund management and a representative of such a holder; and

- (b) a reference to securities is a reference to securities which are listed for quotation, or quoted, on a securities exchange or recognised market operator.

[SIA, s. 41]

[1/2005]

Register of securities

131.—(1) A relevant person shall —

- (a) maintain in the prescribed form a register of his interests in securities;
- (b) enter in the register, within 7 days after the date that he acquires any interest in securities, particulars of the securities in which he has an interest and particulars of his interest in those securities; and
- (c) retain that entry in an easily accessible form for a period of not less than 6 years after the date on which such entry is first made.

(2) Where there is a change (not being a prescribed change) in any interest in securities of a relevant person, he shall —

- (a) enter in the register, within 7 days after the date of the change, particulars of the change including the date of the change and the circumstances by reason of which the change has occurred; and
- (b) retain that entry in an easily accessible form for a period of not less than 6 years after the date on which such entry was first made.

[SIA, s. 42]

[16/2003]

Notice of particulars to Authority

132.—(1) A relevant person shall give notice to the Authority in the prescribed form of —

- (a) the place at which he will keep the register of his interests in securities or, if the register is in electronic form, the place at which full access to the register may be gained; and
- (b) such other particulars as may be prescribed.

(2) The notice under subsection (1) shall be given by the relevant person as part of his application for a licence under this Act.

(3) A person who ceases to be a relevant person shall, within 14 days of his so ceasing, notify the Authority.

(4) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

[SIA, s. 43]

Place at which register is kept

133.—(1) A relevant person shall keep the register of his interests in securities —

- (a) in the case of an individual, at his principal place of business; or
- (b) in the case of a corporation, at any of its places of business.

(2) Where a register of interests in securities is kept in electronic form, a relevant person shall be deemed to be in compliance with subsection (1) if he ensures that full access to such register may be gained by the Authority at the place referred to in subsection (1) (a) or (b), as the case may be.

[SIA, s. 43A]

Defence to prosecution

134.—(1) Where a person is charged with an offence in respect of a contravention of section 131 or 132, it shall be a defence for the person to prove —

- (a) that his contravention was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence; and
- (b) that —
 - (i) he was not so aware on the date of the summons; or
 - (ii) he became so aware before the date of the summons and complied with the relevant section within 14 days after becoming so aware.

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at a particular time of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in the securities concerned, was aware at that time.

[SIA, s. 44]

Production of register

135.—(1) The Authority may require any relevant person to produce for its inspection the register of his interests in securities, and the Authority may make a copy of, or take extracts from, the register.

(2) Any relevant person who —

(a) fails to produce the register of his interests in securities for inspection by the Authority; or

(b) fails to allow the Authority to make a copy of, or take extracts from, the register,

shall be guilty of an offence.

[SIA, s. 45]

Extract of register

136. The Authority may supply a copy of an extract of a register obtained under section 135 to any person who, in the opinion of the Authority, should in the public interest be informed of the dealing in securities disclosed in the register.

[SIA, s. 47]

*Division 2 — Disclosure by
Substantial Shareholders*

Duty of substantial shareholders to notify securities exchange

137.—(1) In the case of a company all or any of which shares are listed for quotation on a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) (other than sections 86, 87, 88, 89 and 92) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial shareholder as though references to the company to which notification should be given were references to the securities exchange, and such person shall comply with those provisions accordingly.

[1/2005]

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

*Division 3 — Disclosure by
Substantial Unitholders*

Duty of substantial unitholders to notify securities exchange

137A.—(1) In the case of a collective investment scheme that invests only in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes all or any of which units are listed for quotation on a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) (other than sections 79, 81, 86, 87, 88, 89 and 92) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder as though —

- (a) references to the company to which notification should be given were references to the securities exchange;
- (b) references to shares in the company were references to units in the scheme;
- (c) references to substantial shareholding were references to substantial unitholding; and
- (d) references to a substantial shareholder were references to a substantial unitholder,

and such person shall comply with those provisions accordingly.

[1/2005]

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

[1/2005]

Duty of substantial unitholders to notify trustee of collective investment scheme

137B.—(1) In the case of a collective investment scheme that invests only in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes all or any of which units are listed for quotation on a securities exchange, Division 4 of Part IV of the Companies Act (other than sections 79 and 81) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder as though —

- (a) references to the company to which notification should be given were references to the trustee of the scheme;
 - (b) references to shares in the company were references to units in the scheme;
 - (c) references to substantial shareholding were references to substantial unitholding;
 - (d) references to a substantial shareholder were references to a substantial unitholder; and
 - (e) references to the Registrar were references to the Authority,
- and such person shall comply with those provisions accordingly. [1/2005]

(2) If a person to whom subsection (1) applies fails to comply with any of the provisions of Division 4 of Part IV of the Companies Act (other than sections 79 and 81), he shall be guilty of an offence and shall be liable on conviction to the same penalties as are prescribed under that Act for a failure to comply with such provision. [1/2005]

PART VIII

SECURITIES INDUSTRY COUNCIL AND TAKE-OVER OFFERS

Securities Industry Council

138.—(1) The advisory body known as the Securities Industry Council referred to in section 14 of the repealed Securities Industry Act (Cap. 289, 1985 Ed.) shall continue in existence as if it had been established under this Act.

(2) The function of the Securities Industry Council shall, in addition to the functions conferred upon it under this Part, be to advise the Minister on all matters relating to the securities industry.

(3) The Securities Industry Council shall consist of such representatives of business, the Government and the Authority as the Minister may appoint and those representatives shall serve for such period or periods as the Minister may determine.

(4) The Securities Industry Council shall have the power, in the exercise of its functions, to enquire into any matter or thing related to the securities industry and may, for this purpose, summon any person

to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

(5) Nothing in subsection (4) shall compel the production by an advocate and solicitor of a document containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document which is in his possession.

(6) An advocate and solicitor who refuses to produce the document referred to in subsection (5) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on behalf of whom the communication was made.

(7) The Authority may consult the Securities Industry Council for the proper and effective implementation of this Act.

(8) For the purposes of this Act, every member of the Securities Industry Council —

- (a) shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224); and
- (b) shall have, in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, the like protection and privileges as are by law given to a Judge in the execution of his office.

(9) The Securities Industry Council shall in the exercise of its functions have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

(10) Subject to the provisions of this Act, the Securities Industry Council may regulate its own procedure and shall not be bound by the rules of evidence.

[SIA, s. 14]

Take-over Code

139.—(1) This section and section 140 shall apply to and in relation to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all corporations or bodies unincorporate, whether incorporated or carrying on business in Singapore or not, and shall extend to acts done outside Singapore.

(2) For the more effective administration, supervision and control of take-over offers and matters connected therewith, the Authority

shall, on the advice of the Securities Industry Council and under section 321, issue a code known as the Singapore Code on Take-overs and Mergers (referred to in this Act as the Take-over Code).

(3) For the avoidance of doubt, the Take-over Code shall be deemed not to be subsidiary legislation.

(4) The Take-over Code shall apply to a take-over offer and to matters connected therewith, and all parties concerned in a take-over offer or a matter connected therewith shall comply with its provisions.

(5) The Take-over Code shall be administered and enforced by the Securities Industry Council.

(6) The Authority may, on the advice of the Securities Industry Council, revise the Take-over Code by deleting, amending or adding to the provisions thereof.

(7) The Securities Industry Council may issue rulings on the interpretation of the general principles and rules in the Take-over Code and lay down the practice to be followed by parties concerned in a take-over offer or a matter connected therewith, and such rulings or practice shall be final.

(8) A failure of any party concerned in a take-over offer or a matter connected therewith to observe any of the provisions of the Take-over Code shall not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(9) Nothing in subsection (8) shall be construed as preventing the Securities Industry Council from invoking such sanctions (including public censure) as it may decide in relation to breaches of the Take-over Code by any party concerned in a take-over offer or a matter connected therewith.

(10) Where the Securities Industry Council has reason to believe that any party concerned in a take-over offer or a matter connected therewith, or any person advising on a take-over offer or a matter connected therewith, is in breach of the provisions of the Take-over Code or is otherwise believed to have committed acts of misconduct in relation to such take-over offer or matter, the Securities Industry Council shall have power to enquire into the suspected breach or misconduct.

(11) For the purpose of subsection (10), the Securities Industry Council may summon any person to give evidence on oath or affirmation, which it is hereby authorised to administer, or produce any document or material necessary for the purpose of the enquiry.

[Companies, s. 213]

Offences relating to take-over offers

140.—(1) A person who has no intention to make an offer in the nature of a take-over offer shall not give notice or publicly announce that he intends to make a take-over offer.

(2) A person shall not make a take-over offer or give notice or publicly announce that he intends to make a take-over offer if he has no reasonable or probable grounds for believing that he will be able to perform his obligations if the take-over offer is accepted or approved, as the case may be.

(3) Where a person contravenes subsection (1) or (2), the person and, where the person is a corporation, every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

[Companies, s. 213 (9)]

PART IX

SUPERVISION AND INVESTIGATION

Division 1 — Supervisory Powers of Authority

Subdivision (1) — Powers of Authority to require disclosure of information about securities and futures contracts

Interpretation of this Subdivision

141. In this Subdivision, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to producing the document.

[SIA, s. 10 (11)]

Acquisition and disposal of securities or futures contracts, etc.

142.—(1) The Authority may, where it considers it necessary for the protection of investors, require the holder of a capital markets

services licence to deal in securities or trade in futures contracts, or an exempt person carrying on business in any of those activities, to disclose to the Authority, in relation to any acquisition or disposal of securities or futures contracts —

- (a) the name of the person from or through whom or on whose behalf the securities or futures contracts were acquired; or
- (b) the name of the person to or through whom or on whose behalf the securities or futures contracts were disposed of,

and the nature of the instructions given to the holder or exempt person in respect of the acquisition or disposal.

(2) The Authority may require a person who has acquired, held or disposed of securities or futures contracts to disclose to the Authority whether he acquired, held or disposed of those securities or futures contracts, as the case may be, as trustee for, or on behalf of, another person (whether or not as a nominee), and if so —

- (a) the name of that other person; and
- (b) the nature of any instructions given to the first-mentioned person in respect of the acquisition, holding or disposal.

(3) The Authority may require a securities exchange or futures exchange to disclose to the Authority, in relation to an acquisition or disposal of securities on the securities market of that securities exchange or futures contracts on the futures market of that futures exchange, the names of the members of that securities exchange or futures exchange who acted in the acquisition or disposal.

(4) The Authority may require a designated clearing house for a securities market or futures market to disclose to the Authority, in relation to any dealing in securities on that securities market or trading in futures contracts on that futures market, the names of the members of the designated clearing house who were concerned in any act or omission in relation to the dealing or trading.

[SIA, s. 10 (1)-(3) modified]

[1/2005]

Exercise of certain powers in relation to securities

143.—(1) This section shall apply where the Authority considers that —

- (a) it may be necessary to prohibit dealing in securities of, or made available by, a corporation under section 32;

1.4.2006

- (b) a person may have contravened any of the provisions of Part XII in relation to securities of, or made available by, a corporation; or
- (c) a person may have contravened any of the provisions of Division 4 of Part IV of the Companies Act (Cap. 50) or Division 2 of Part VII in relation to securities in a corporation.

[42/2005]

(2) The Authority may require an officer of a corporation referred to in subsection (1) to disclose to the Authority any information of which he is aware and which may have affected any dealing that has taken place, or which may affect any dealing that may take place, in securities of, or made available by, the corporation.

(3) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) any dealing in securities of, or made available by, a corporation referred to in subsection (1);
- (b) any advice given, or any report or analysis issued or published concerning such securities, by the holder of a capital markets services licence to deal in securities, or a representative of such a holder;
- (c) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to deal in securities and who has dealt in or given advice or issued or published a report or an analysis concerning such securities;
- (d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is a person referred to in that paragraph; or
- (e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to deal in securities, being a book relating to dealings in such securities,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[SIA, s. 10 (4)]

Exercise of certain powers in relation to futures contracts

144.—(1) This section shall apply where the Authority considers that —

- (a) it may be necessary to give a direction or take any action in relation to any trading in futures contracts under section 34; or
- (b) a person may have contravened any of the provisions of Part XII in relation to futures contracts.

[42/2005]

(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) any trading in futures contracts;
- (b) any advice given, or any report or analysis issued or published concerning such futures contracts, by the holder of a capital markets services licence to trade in futures contracts, or a representative of such a holder;
- (c) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to trade in futures contracts and has traded in or given advice or issued or published a report or an analysis concerning such futures contracts;
- (d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons, at least one of whom is a person referred to in that paragraph; or
- (e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to trade in futures contracts, being a book relating to trading in such futures contracts,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[SIA, s. 10 (4) modified]

Self-incrimination

145.—(1) A person is not excused from disclosing information to the Authority, under a requirement made of him under section 142,

143 or 144, on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to disclose by a requirement made of him under section 142, 143 or 144, that the statement might tend to incriminate him, that statement —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under section 148; but
- (b) shall be admissible in evidence for civil proceedings under Part XII.

[SIA, s. 5 (12) modified; HK SF Bill, Clause 180]

Savings for advocates and solicitors

146.—(1) Nothing in this Subdivision shall compel the disclosure by an advocate and solicitor of information containing a privileged communication made by or to him in that capacity.

[16/2003]

(2) An advocate and solicitor who refuses to disclose the information referred to in subsection (1) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[SIA, s. 8]

Immunities

147.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 148, shall lie against any person for disclosing any information to the Authority if he had done so in good faith in compliance with a requirement of the Authority under section 142, 143 or 144.

(2) Any person who complies with a requirement of the Authority under section 142, 143 or 144 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

[SIA, s. 96F (modified)]

Offences

148.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under section 142, 143

or 144 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 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.

(2) A person who, in purported compliance with a requirement of the Authority under section 142, 143 or 144, discloses information, or makes a statement, that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

[SIA, s. 10 (8), (9) and (10)]

Copies of or extracts from documents to be admitted in evidence

149.—(1) Subject to this section, a copy of or extract from a document produced under this Subdivision that is proved to be a true copy of the document or of the relevant part of the document is admissible in evidence as if it were the original document or the relevant part of the original document.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a document is a true copy of the document or of a part of the document may be given by a person who has compared the copy or extract with the document or the relevant part of the document and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

[SIA, s. 7]

Subdivision (2) — Inspection powers of Authority

Inspection by Authority

150.—(1) The Authority may inspect under conditions of secrecy, the books of 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, the holder of a capital markets services licence, an exempt person or a representative.

[1/2005]

(2) For the purpose of an inspection under this section —

- (a) a person referred to in subsection (1) or any person in possession of the books, shall produce such books to the Authority and give such information and facilities as may be required by the Authority; and
- (b) a person referred to in subsection (1) shall procure that any person who is in possession of such books produce the books to the Authority and give such information and facilities as may be required by the Authority.

(3) The Authority may —

- (a) make copies of, or take possession of, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and
- (c) retain possession of any of the books for so long as is necessary —
 - (i) for the purposes of exercising a power conferred by this section (other than subsection (5));
 - (ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or
 - (iii) for such proceedings to be instituted and carried on.

(4) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority, the Authority —

- (a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and
- (b) may permit another person to inspect any of the books.

(6) The Authority may require a person who produced any of the books to the Authority to explain to the best of his knowledge and belief any matter about the compilation of the books or to which the books relate.

(7) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (6) 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.

(8) Sections 146 and 147 shall, with the necessary modifications, apply in relation to the production of any book or disclosure of any information to the Authority under this section.

(9) Section 149 shall, with the necessary modifications, apply in relation to a copy of, or extract from, a book inspected under this section.

[SIA, s. 12 modified; FTA, s. 48 modified; ASIC 1989, s. 37]

*Division 2 — Power of Minister to Appoint
Inspector for Investigating Dealings
in Securities, etc.*

Power of Minister to appoint inspectors

151.—(1) Notwithstanding anything in this Act, the Minister may, if he thinks it in the public interest to do so, appoint any person as an inspector to investigate any matter concerning dealing in securities, trading in futures contracts or leveraged foreign exchange trading.

(2) An inspector appointed under subsection (1) shall have all the powers conferred upon an inspector under Part IX of the Companies Act (Cap. 50) and that Part shall, with the necessary modifications, apply to such investigation.

(3) Any inspector appointed under subsection (1) shall report the results of his investigation to the Minister and the Minister may, if he thinks it in the public interest to do so, cause the report to be printed and published.

[SIA, s. 112]

*Division 3 — Investigative Powers of Authority
Subdivision (1) — General*

Investigation by Authority

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

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

(2) The Authority may exercise any of its powers under this Division for the purposes of conducting an investigation under subsection (1) notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

(3) A requirement imposed by the Authority in the exercise of its powers under this Division shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Division shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(5) No civil or criminal action, other than proceedings for an offence under section 162 or 168, shall lie against any person —

- (a) for giving assistance to the Authority, including answering questions, if he had given the assistance or answered the questions in good faith in compliance with a requirement imposed under this Division;
- (b) for providing information or producing books to the Authority if he had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Division; or
- (c) for doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

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

Self-incrimination and savings for advocates and solicitors

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

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

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under this section; but
- (b) shall, for the avoidance of doubt, be admissible in evidence in civil proceedings under Part XII.

(3) Nothing in this Division shall —

- (a) compel an advocate and solicitor to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or
- (b) authorise the taking of any such document or other material which is in his possession.

[16/2003]

(4) An advocate and solicitor who refuses to disclose the information or produce the document or other material referred to in subsection (3) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[SIA, s. 96D (6) modified; HK SF Bill, Clause 180]

Subdivision (2) — Examination of persons**Requirement to appear for examination**

154.—(1) For the purpose of an investigation under this Division, the Authority may, in writing, require a person —

- (a) to give to the Authority all reasonable assistance in connection with the investigation; and

- (b) to appear before an officer of the Authority duly authorised by the Authority for examination on oath and to answer questions.

(2) A requirement in writing imposed under subsection (1) shall state the general nature of the matter referred to in subsection (1).

[ASIC 1989, s. 19 modified]

Proceedings at examination

155. The provisions of this Subdivision shall apply where, pursuant to a requirement made under section 154 for the purposes of an investigation under this Division, a person (referred to in this Subdivision as the examinee) appears before another person (referred to in this Subdivision as the investigator) for examination.

[ASIC 1989, s. 20]

Requirements made of examinee

156.—(1) The investigator may examine the examinee on oath or affirmation and may, for that purpose, administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.

(3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under this Division.

[ASIC 1989, s. 21]

Examination to take place in private

157.—(1) The examination shall take place in private and the investigator may give directions as to who may be present during the examination or part thereof.

(2) A person shall not be present at the examination unless he is —

- (a) the investigator or the examinee;
- (b) a person approved by the Authority; or
- (c) entitled to be present by virtue of a direction under subsection (1).

[ASIC 1989, s. 22]

Record of examination

158.—(1) The investigator may, and shall if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing —

- (a) the investigator may require the examinee to read the record, or to have it read to him, and may require him to sign it; and
- (b) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

[ASIC 1989, s. 24]

Giving copies of record to other persons

159.—(1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates.

(2) If the Authority gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, shall not, except in connection with preparing, beginning or carrying on, or in the course of, any proceedings —

- (a) use the copy or a copy of it; or
- (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related book.

[ASIC 1989, s. 25]

Copies given subject to conditions

160. If a copy of a written record or a book is given to a person under section 158 (2) or 159 (3) subject to conditions or restrictions imposed by the Authority, the person, and any other person who has

possession, custody or control of the copy or a copy of it, shall comply with the conditions.

[ASIC 1989, s. 26]

Record to accompany report

161. If —

- (a) in the Authority's opinion, a statement made at an examination is relevant to any other investigation conducted under this Division;
- (b) a record of the statement was made under section 158; and
- (c) a report about the other investigation is prepared under section 151 (3),

a copy of the record shall accompany the report to be submitted to the Minister under section 151 (3).

Offences under this Subdivision

162.—(1) A person who, without reasonable excuse, refuses or fails to comply with section 154 or 156 (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.

[1/2005]

(2) A person who, without reasonable excuse —

- (a) refuses or fails to take an oath or make an affirmation when required to do so by an investigator examining him under this Subdivision;
- (b) refuses or fails to comply with a requirement of an investigator under section 158 (2) (a); or
- (c) refuses or fails to comply with section 159 (2) or 160,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) A person who, in purported compliance with the provisions of this Subdivision, or in the course of examination of the person, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) It shall be a defence to a prosecution for an offence under subsection (3) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(5) A person who, without reasonable excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Subdivision 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.

[1/2005]

[SIA, s. 6; ASIC 1989, s. 63–67]

Subdivision (3) — Powers to obtain information

Power of Authority to order production of books

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

Application for warrant to seize books not produced

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

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

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

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

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

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

(b) which the Magistrate has reasonable grounds to suspect will not be produced in compliance with that requirement, the Magistrate may issue a warrant authorising the Authority or any person named therein, with or without assistance —

- (i) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and
- (ii) to take possession of, or secure against interference, any book that appears to be a book the production of which was so required.

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

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

[SIA, s. 5 (9) to (11) modified]

Powers where books are produced or seized

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

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

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

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

- (a) inspect, and may make copies of, or take extracts from, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of any proceedings; and

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

- (i) for the purposes of exercising a power conferred by this section (other than subsection (5));
- (ii) for a decision to be made about whether or not any proceedings to which the books concerned would be relevant should be instituted; or
- (iii) for such proceedings to be instituted and carried on.

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

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

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

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

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

- (a) if subsection (1) (a) applies, a person who so produced any of the books; or
- (b) in any other case, a person who was a party to the compilation of any of the books,

to explain to the best of his knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

[SIA, s. 5 (6) (a); ASIC 1989, s. 37 modified]

Powers where books not produced

166. Where a person fails to comply with a requirement imposed by the Authority under section 163 to produce any book, the Authority may require the person to state, to the best of his knowledge and belief —

- (a) the place where such book may be found; and
- (b) the person who last had possession, custody or control of such book and the place where that person may be found.

[SIA, s. 5 (6) (b); ASIC 1989, s. 38]

Copies of or extracts from books to be admitted in evidence

167.—(1) Subject to this section, a copy of or extract from a book referred to in this Subdivision that is proved to be a true copy of the book or of the relevant part of the book is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

[1/2005]

[SIA, s. 7]

Offences under this Part

168.—(1) A person who, without reasonable excuse, refuses or fails to comply with any requirement imposed under section 163, 165 (7) or 166 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[1/2005]

(2) A person who, in purported compliance with a requirement under this Subdivision, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It shall be a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and not misleading.

(4) Any person, who conceals, destroys, mutilates or alters any book relating to a matter that the Authority is investigating or about to investigate under this Division or who, where such a book is within the territory of Singapore, takes or sends the book out of Singapore, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) A person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under this Subdivision, or obstructs or hinders a person who is executing a warrant issued under section 164, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[1/2005]

(6) The occupier or the person in charge of the premises that a person enters under a warrant issued under section 164 who fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

[SIA, s. 6 modified; ASIC 1989, s. 63–67]

PART X

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

169. In this Part, unless the context otherwise requires —

“enforce” means enforce through criminal, civil or administrative proceedings;

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the securities or futures industry of the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the securities or futures industry of the foreign country of the regulatory authority concerned;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of —

- (a) a person operating a securities market or futures market, an intermediary or any other person regulated by the regulatory authority; or
- (b) the issuance of or trading in securities, or the trading in futures contracts in the foreign country of the regulatory authority.

[SIA, s. 96A; FTA, s. 49Q]

Conditions for provision of assistance

170.—(1) The Authority may provide the assistance referred to in section 172 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request by the regulatory authority for assistance is received by the Authority on or after 6th March 2000;
- (b) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out the supervision, investigation or enforcement;
- (c) the contravention of the law or regulatory requirement to which the request relates took place on or after 6th March 2000;
- (d) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request

shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;

- (e) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (f)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;
- (f) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;
- (g) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
- (h) the matter to which the request relates is of sufficient gravity; and
- (i) the rendering of assistance will not be contrary to the public interest or the interest of the investing public.

(2) For the purposes of subsection (1) (e) and (f), “designated third party”, in relation to a foreign country, means —

- (a) any person or body responsible for supervising the regulatory authority in question;
- (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
- (c) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

[SIA, s. 96B; FTA, s. 49R]

Other factors to consider for provision of assistance

171. In deciding whether to grant a request for assistance referred to in section 172 from a regulatory authority of a foreign country, the Authority may also have regard to the following:

- (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which

the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;

- (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance; and
- (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

[SIA, s. 96C; FTA, s. 49S]

Assistance that may be rendered

172.—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;
- (b) order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
- (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
- (d) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or
- (e) request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1) (c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1) (b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section shall compel an advocate and solicitor —

(a) to furnish or transmit any material or copy thereof that contains; or

(b) to disclose,

a privileged communication made by or to him in that capacity.

(5) An advocate and solicitor who refuses to furnish or transmit any material or copy thereof that contains, or to disclose, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) A person is not excused from making an oral statement pursuant to an order made under subsection (1) (d) on the ground that the statement might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement —

(a) shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 173; but

(b) shall be admissible in evidence in civil proceedings under Part XII.

[SIA, s. 96D; FTA, s. 49T]

Offences under this Part

173. Any person who —

(a) without reasonable excuse refuses or fails to comply with an order under section 172 (1) (b), (c) or (d);

(b) in purported compliance with an order under section 172 (1) (b) or (c), furnishes to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or

- (c) in purported compliance with an order made under section 172 (1) (d), makes a statement to the Authority that is false or misleading in a material particular,

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

[SIA, s. 96E; FTA, s. 49U]

Immunities

174.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 173, shall lie against any person for —

- (a) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 172 (1) (b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 172 (1) (d); or
- (c) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1) (a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

[SIA, s. 96F; FTA, s. 49V]

PART XI

INVESTOR COMPENSATION SCHEME

Interpretation of this Part

175. In this Part, “member”, in relation to a securities exchange or futures exchange, means a person who —

- (a) holds membership of any class or description of the securities exchange or futures exchange, whether or not he holds any share in the share capital of such exchange; and

- (b) is licensed by the Authority to carry on the business of dealing in securities or trading in futures contracts, as the case may be.

[SIA, s. 74; FTA, s. 49A]

Establishment of fidelity fund

176.—(1) Each securities exchange and each futures exchange shall establish, keep and administer a fidelity fund (referred to in this Part as a fidelity fund or fund).

(2) The assets of the fidelity fund of a securities exchange or futures exchange shall —

- (a) be the property of the exchange;
- (b) be kept separate from all other property of the exchange; and
- (c) be held in trust for the purposes set out in this Part.

[SIA, s. 75; FTA, s. 49AA]

Moneys constituting fidelity fund

177. The fidelity fund of a securities exchange or futures exchange shall consist of —

- (a) all moneys paid to the exchange by its members in accordance with this Part;
- (b) all moneys paid to the fund by the exchange;
- (c) all interest and profits from time to time accruing from the investment of the fund;
- (d) all moneys recovered by or on behalf of the exchange in the exercise of any right of action conferred by this Part;
- (e) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the exchange under section 194; and
- (f) all other moneys lawfully paid into the fund.

[SIA, s. 76; FTA, s. 49B]

Fund to be kept in separate bank account

178. All moneys forming part of a fidelity fund shall, pending the investment or application thereof in accordance with this Part, be kept in a separate bank account in Singapore.

[SIA, s. 77; FTA, s. 49C]

Payments out of fidelity fund

179. Subject to this Part, there shall be paid out of the fidelity fund of a securities exchange or futures exchange as required and in such order as the exchange considers proper —

- (a) the amount of all claims, including costs, allowed by the exchange or established against the exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the exchange under section 194;
- (d) all expenses incurred or involved in the administration of the fund, including the salaries and wages of persons employed by the exchange in relation thereto; and
- (e) all other moneys payable out of the fund in accordance with this Act.

[SIA, s. 78; FTA, s. 49D]

Accounts of fund

180.—(1) A securities exchange or futures exchange shall establish and keep proper accounts of its fidelity fund and shall, within 5 months from the last day of each financial year of that exchange, cause a balance-sheet in respect of such accounts to be made out as at the last day of that financial year.

(2) The securities exchange or futures exchange shall appoint an auditor to audit the accounts of the fidelity fund.

(3) The auditor appointed by the securities exchange or futures exchange shall —

- (a) regularly and fully audit the accounts of the fidelity fund; and
- (b) audit each balance-sheet and cause it to be laid before the exchange not later than 3 months after the balance-sheet was made out.

[SIA, s. 79; FTA, s. 49E]

Fidelity fund to consist of amount of \$20 million, etc.

181. The fidelity fund of a securities exchange or futures exchange shall consist of an amount of not less than —

- (a) \$20 million; or
- (b) such other amount as the Authority may, by order published in the *Gazette*, specify in substitution of the amount specified under paragraph (a),

to be paid to the credit of the fund on the approval of the exchange under this Act or at any time after its approval as determined by the Authority.

[SIA, s. 81; FTA, s. 49F]

Provisions if fund is reduced below minimum amount

182. If the fidelity fund of a securities exchange or futures exchange is reduced below the minimum amount referred to in section 181, the exchange shall take steps to make up the deficiency —

- (a) by transferring an amount that is equal to the deficiency from other funds of the exchange to the fidelity fund; and
- (b) in the event that there are insufficient funds to transfer under paragraph (a), by requiring each member of the exchange to contribute to the fund such amount as the exchange may determine.

[SIA, s. 82; FTA, s. 49G]

Levy to meet liabilities

183.—(1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are then ascertained of a securities exchange or futures exchange in relation thereto, the securities exchange or futures exchange —

- (a) may impose on every member a levy of such amount as it thinks fit; or
- (b) if ordered by the Authority, shall impose a levy of such amount which shall in the aggregate be equivalent to the amount so specified in the order.

(2) The amount of such levy shall be paid within the time and in the manner specified by the securities exchange or futures exchange either generally or in relation to any particular case.

(3) No member of a securities exchange or futures exchange shall be required to pay by way of levy under this section more than \$300,000 in the aggregate in any particular case.

[SIA, s. 83]

Power of securities exchange or futures exchange to make advances to fund

184.—(1) A securities exchange or futures exchange may, out of its general funds, give or advance any sum of money to its fidelity fund on such terms as it thinks fit.

(2) Any sum of money advanced by a securities exchange or futures exchange under subsection (1) may be repaid out of the fidelity fund to the general funds of the securities exchange or futures exchange, as the case may be.

[SIA, s. 84]

Investment of fund

185. Any moneys in a fidelity fund that are not immediately required for any purpose referred to in this Part may be invested by a securities exchange or futures exchange in any manner in which trustees are for the time being authorised by law to invest trust funds.

[SIA, s. 85; FTA, s. 49H]

Application of fund

186.—(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating any person (other than an accredited investor) who suffers pecuniary loss because of a defalcation committed —

- (a) in the course of, or in connection with, a dealing in securities, or the trading of a futures contract;
- (b) by a member of a securities exchange or futures exchange or by any agent of such member; and
- (c) in relation to any money or other property which, after the establishment of the fidelity fund was entrusted to or received —
 - (i) by that member or by any of its agents for or on behalf of any other person; or

- (ii) by that member either as the sole trustee or as trustee with any other person or persons, or by any of its agents as trustee or for or on behalf of the trustees of that money or property.

(2) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Bankruptcy Act (Cap. 20) an amount not greater than the amount that the Official Assignee or the trustee in bankruptcy, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt, who is a member of a securities exchange or futures exchange, are insufficient to satisfy any debts arising from dealings in securities or trading in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt member.

(3) Subsection (2) shall apply in the case of a member of a securities exchange or futures exchange who has made a voluntary arrangement with his creditors under Part V of the Bankruptcy Act in like manner as that subsection applies in the case of a member who has become bankrupt.

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

- (a) a reference to a trustee in bankruptcy in subsection (2) shall be deemed to be a reference to a nominee within the meaning of Part V of the Bankruptcy Act;
- (b) a reference to debts proved in bankruptcy in subsection (2) shall be deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part V of the Bankruptcy Act; and
- (c) a reference to the bankrupt in subsection (2) shall be deemed to be a reference to the person who made the voluntary arrangement under Part V of the Bankruptcy Act.

(5) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to a liquidator of a member of a securities exchange or futures exchange that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member are insufficient to satisfy any debts arising from dealings in securities or trading in futures contracts that have been proved in the liquidation of the member.

(6) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1), no claim for a payment under subsection (2) or (5) shall be made in respect of the same pecuniary loss.

(7) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (2), no claim for compensation under subsection (1) or for a payment under subsection (5) shall be made in respect of the same deficiency.

(8) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (5), no claim for compensation under subsection (1) or for a payment under subsection (2) shall be made in respect of the same deficiency.

(9) Moneys paid under subsection (2) or (5) may only be applied by the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator, as the case may be, for the purpose of satisfying debts arising from dealings in securities or trading in futures contracts, and for no other purpose.

(10) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund under this Part for the purpose of —

(a) compensating pecuniary loss under subsection (1); or

(b) making a payment under subsection (2) or (5),

shall not, in respect of each member, exceed the prescribed amount*.

(11) Subject to the provisions of this section —

(a) the amount that may be paid out of the fidelity fund to each claimant under subsection (1) in relation to each member; or

(b) the amount that the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator may pay to each creditor of a member from any amount paid to the Official Assignee, trustee in bankruptcy, nominee or liquidator, as the case may be, under subsection (2) or (5),

shall not exceed the prescribed amount†.

(12) For the purposes of subsections (10) and (11), any amount paid out of the fidelity fund shall, to the extent to which the fund is subsequently reimbursed therefor, be disregarded.

*Prescribed amount shall be \$2 million for the purposes of section 186 (10) — *see* G.N. No. S 367/2005.

†Prescribed amount shall be \$50,000 for the purposes of section 186 (11) — *see* G.N. No. S 367/2005.

(13) In this section, “agent”, in relation to a member of a securities exchange or futures exchange —

- (a) means a person who is a director, an officer, an employee or a representative of the member; and
- (b) includes a person who has been, but at the time of any defalcation in question has ceased to be, a director, an officer, an employee or a representative of the member if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director, an officer, an employee or a representative of the member.

(14) Nothing in this Part shall be construed as to allow a person to claim compensation against the fidelity fund of a futures exchange if —

- (a) the person has suffered pecuniary loss because of a defalcation committed by a member of the exchange or by any agent of the member; and
- (b) such defalcation is in respect of moneys deposited by that person with the member or moneys belonging to that person held by that member, in connection with the trading of a contract which is not a futures contract that is cleared or to be cleared by a designated clearing house or a futures exchange in Singapore.

[SIA, s. 86; FTA, s. 49I]

[1/2005]

Claims against fund

187.—(1) Subject to this Part, every person who suffers pecuniary loss referred to in section 186 shall be entitled to claim compensation out of the fidelity fund and to take proceedings in the High Court under this Act against a securities exchange or futures exchange to establish such claim.

(2) A person shall not have any claim against the fidelity fund in respect of a defalcation in respect of money or other property which prior to the commission of the defalcation had, in the due course of the administration of a trust, ceased to be under the sole control of the director or directors of the member of a securities exchange or futures exchange.

(3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation out of a fidelity fund shall be the

amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of the loss.

[SIA, s. 87; FTA, s. 49J]

Notice calling for claims against fund

188.—(1) A securities exchange or futures exchange may cause to be published in a daily newspaper published and circulating generally in Singapore a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the date of publication, on or before which claims for compensation out of the fidelity fund, in relation to the person specified in the notice, may be made.

(2) A claim for compensation out of a fidelity fund in respect of a defalcation shall be made in writing to the securities exchange or futures exchange, as the case may be —

- (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or
- (b) where no such notice has been published, within 6 months after the claimant became aware of the defalcation.

(3) Any claim which is not made in accordance with subsection (2) shall be barred unless the securities exchange or futures exchange otherwise allows.

(4) No action for damages shall lie against a securities exchange or futures exchange or against any member or employee of the securities exchange or futures exchange by reason of any notice published in good faith and without malice for the purposes of this section.

[SIA, s. 88; FTA, s. 49K]

Power of securities exchange or futures exchange to settle claims

189.—(1) A securities exchange or futures exchange may, subject to this Part, allow and settle any proper claim for compensation out of a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

(2) Subject to subsection (3), a person shall not commence proceedings under this Part against a securities exchange or futures

exchange without the consent of the securities exchange or futures exchange, as the case may be, unless —

- (a) the securities exchange or futures exchange has disallowed his claim; and
- (b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property, in respect of which the defalcation was committed, available against a member of the securities exchange or futures exchange in relation to whom or to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.

(3) A person who has been refused consent to commence proceedings under this Part by a securities exchange or futures exchange under subsection (2) may apply for leave to a Judge of the High Court in chambers who may make such order in the matter as he thinks fit.

(4) A securities exchange or futures exchange shall, after disallowing (whether wholly or in part) any claim for compensation out of a fidelity fund, serve notice of such disallowance in the prescribed form on the claimant or his solicitor.

(5) No proceedings against a securities exchange or futures exchange in respect of a claim which has been disallowed by the exchange shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

(6) In any proceedings brought to establish a claim —

- (a) evidence of any admission or confession by, or other evidence which would be admissible against, the member of a securities exchange or futures exchange or other person by whom it is alleged a defalcation was committed, shall be admissible to prove the commission of the defalcation, notwithstanding that the member or other person is not the defendant in or a party to those proceedings; and
- (b) all defences which would have been available to that member or person shall be available to the securities exchange or futures exchange.

(7) A securities exchange or futures exchange or, where proceedings are brought to establish a claim, the High Court, if satisfied that the defalcation on which the claim is founded was actually committed, may

allow the claim and act accordingly, notwithstanding that the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the securities exchange or futures exchange or the High Court, as the case may be, acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the defalcation.

[SIA, s. 89; FTA, s. 49L]

Power of securities exchange or futures exchange to require production of evidence

190.—(1) A securities exchange or futures exchange may require any person to produce and deliver any contract note, document or statement of evidence necessary to support any claim made, or necessary for the purpose either of exercising its rights against a member of a securities exchange or futures exchange or the directors of that member or any other person concerned, or of enabling criminal proceedings to be taken against any person in respect of a defalcation.

(2) Where a person who is required under subsection (1) to produce or deliver any contract note, document or statement of evidence fails to do so, the securities exchange or futures exchange may disallow any claim by him under this Part.

[SIA, s. 91; FTA, s. 49M]

Subrogation of securities exchange or futures exchange to rights, etc., of claimant upon payment from fund

191. On payment out of a fidelity fund of any moneys in respect of any claim under this Part, the securities exchange or futures exchange shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him by reason of the defalcation on which the claim was based.

[SIA, s. 92; FTA, s. 49N]

Payment of claims only from fund

192. No moneys or other property belonging to a securities exchange or futures exchange, other than the fidelity fund, shall be available for the payment of any claim under this Part, whether the claim is allowed by the securities exchange or futures exchange or is made the subject of an order of the High Court.

[SIA, s. 93; FTA, s. 49O]

Provision where fund insufficient to meet claims or where claims exceed total amount payable

193.—(1) Where the amount at credit in a fidelity fund is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders of the High Court have been made, then the amount at credit in the fund shall, subject to subsection (2), be apportioned between the claimants in such manner as the securities exchange or futures exchange thinks equitable, and such claim shall, so far as it then remains unpaid, be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the High Court have been made in relation to a defalcation by or in connection with a member of a securities exchange or futures exchange exceeds the total amount which may, pursuant to section 186 (10), be paid under this Part in respect of that member, then such total amount shall be apportioned between the claimants in such manner as the securities exchange or futures exchange thinks equitable.

(3) Upon payment out of the fidelity fund of such total amount in accordance with the apportionment of all such claims under subsection (2), any order relating thereto and all other claims against the fund which may thereafter arise or be made in respect of that defalcation by or in connection with that member shall be absolutely discharged.

[SIA, s. 94; FTA, s. 49P]

Power of securities exchange or futures exchange to enter into contracts of insurance

194.—(1) A securities exchange or futures exchange may in its discretion, enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Singapore whereby the securities exchange or futures exchange will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part.

(2) Any contract under subsection (1) may be entered into in relation to members generally, or in relation to any particular member or members named therein, or in relation to members generally with the exclusion of any particular member or members named therein.

(3) No action shall lie against a securities exchange or futures exchange or against any member or employee of a securities exchange or futures exchange for injury alleged to have been suffered by any other member by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

[SIA, s. 95]

Application of insurance moneys

195. No claimant against a fidelity fund shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or have any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

[SIA, s. 96]

PART XII

MARKET CONDUCT

Division 1 — Prohibited Conduct — Securities

Application of this Division

196. This Division shall apply to —

- (a) acts occurring within Singapore in relation to —
 - (i) securities of any corporation, whether formed or carrying on business in Singapore or elsewhere;
 - (ia) securities of any business trust; or
 - (ii) securities listed for quotation or quoted on a securities market in Singapore or elsewhere; and
- (b) acts occurring outside Singapore, in relation to —
 - (i) securities of a corporation that is formed or carrying on business in Singapore;
 - (ia) securities of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore; or
 - (ii) securities listed for quotation or quoted on a securities market in Singapore.

[Malaysia SIA, s. 88C]

[1/2005]

Interpretation of this Division**196A.** In this Division —

“debenture” has the same meaning as in section 2 and, in relation to a business trust, means any debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

“securities” —

(a) in relation to a corporation, for the purposes of sections 196 (a) (i) and (b) (i), 198, 202 and 203, means —

- (i) debentures, stocks or shares issued or proposed to be issued by a corporation;
- (ii) any right, option or derivative in respect of any such debentures, stocks or shares; or
- (iii) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
 - (A) the value or price of any such debentures, stocks or shares;
 - (B) the value or price of any group of any such debentures, stocks or shares; or
 - (C) an index of any such debentures, stocks or shares,

but does not include —

- (AA) futures contracts;
 - (BB) bills of exchange;
 - (CC) promissory notes; or
 - (DD) certificates of deposit issued by a bank or finance company;
- (b) in relation to a business trust, for the purposes of sections 196(a) (ia) and (b) (ia), 198, 202 and 203, means —
- (i) units in a business trust;
 - (ii) derivatives of units in a business trust;
 - (iii) debentures of a business trust; or

- (iv) any right, option or derivative in respect of any such debentures,
but does not include —
 - (A) futures contracts;
 - (B) bills of exchange; or
 - (C) promissory notes; and
- (c) in any other case, has the same meaning as in section 2.

[1/2005]

False trading and market rigging transactions

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

- (a) of active trading in any securities on a securities market; or
- (b) with respect to the market for, or the price of, such securities.

(2) No person shall, by means of any purchase or sale of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

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

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

same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

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

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

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

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

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

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

[SIA, s. 97; Aust. Corporations 2001, s. 998]

Securities market manipulation

198.—(1) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the corporation on a securities market, with intent to

induce other persons to subscribe for, purchase or sell securities of the corporation or of a related corporation.

(1A) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities of a business trust, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the business trust on a securities market, with intent to induce other persons to subscribe for, purchase or sell securities of the business trust.

[1/2005]

(2) A reference in subsection (1) or (1A) to transactions in securities of a corporation or securities of a business trust, as the case may be, includes —

- (a) a reference to the making of an offer to purchase or sell such securities of the corporation or such securities of the business trust, as the case may be; and
- (b) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities of the corporation or such securities of the business trust, as the case may be.

[1/2005]

[SIA, s. 98]

False or misleading statements, etc.

199. No person shall make a statement, or disseminate information, that is false or misleading in a material particular and is likely —

- (a) to induce other persons to subscribe for securities;
- (b) to induce the sale or purchase of securities by other persons; or
- (c) to have the effect of raising, lowering, maintaining or stabilising the market price of securities,

if, when he makes the statement or disseminates the information —

- (i) he does not care whether the statement or information is true or false; or
- (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

[SIA, s. 99; Aust. Corporations 2001, s. 999]

Fraudulently inducing persons to deal in securities

200.—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in securities.

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1) (d), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

(3) In any proceedings against a person for a contravention of subsection (1), the opinion of any registered or public accountant as to the financial position of any company at any time or during any period in respect of which he has made an audit or examination of the affairs of the company according to recognised audit practice shall be admissible, for any party to the proceedings, as evidence of the financial position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

[SIA, s. 100; Companies, s. 404 (4)]

Employment of manipulative and deceptive devices

201. No person shall, directly or indirectly, in connection with the subscription, purchase or sale of any securities —

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;

- (c) make any statement he knows to be false in a material particular; or
- (d) omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

[SIA, s. 102]

Dissemination of information about illegal transactions

202. No person shall circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation or any securities of a business trust will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to securities of that corporation, or of a corporation that is related to that corporation, or securities of that business trust, as the case may be, which to his knowledge, was entered into or done in contravention of section 197, 198, 199, 200 or 201 or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201 if —

- (a) the person, or a person associated with the person, has entered into or purports to enter into any such transaction or has done or purports to do any such act or thing; or
- (b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.

[SIA, s. 101]

[1/2005]

Continuous disclosure

203.—(1) This section shall apply to —

- (a) an entity the securities of which are listed for quotation on a securities exchange;
- (b) a trustee of a business trust, where the securities of the business trust are listed for quotation on a securities exchange; or
- (c) a responsible person of a collective investment scheme, where the units of the collective investment scheme are listed for quotation on a securities exchange,

if the entity, trustee or responsible person is required by the securities exchange under the listing rules or any other requirement of the securities exchange to notify the securities exchange of information on specified events or matters as they occur or arise for the purpose of the securities exchange making that information available to a securities market operated by the securities exchange.

[1/2005]

(2) The persons specified in subsection (1) (a), (b) or (c) shall not intentionally, recklessly or negligently fail to notify the securities exchange of such information as is required to be disclosed by the securities exchange under the listing rules or any other requirement of the securities exchange.

[1/2005]

(3) Notwithstanding section 204, a contravention of subsection (2) shall not be an offence unless the failure to notify is intentional or reckless.

[Aust. Corporations 2001, s. 1001A]

Penalties under this Division

204.—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 232 in respect of the contravention.

[SIA, s. 104]

Division 2 — Prohibited Conduct — Futures Contracts, Leveraged Foreign Exchange Trading

Application of this Division

205. This Division shall apply to —

- (a) acts occurring within Singapore, in relation to —
 - (i) futures contracts, whether traded on a futures market in Singapore or elsewhere; or
 - (ii) foreign exchange in connection with leveraged foreign exchange trading, whether in Singapore or elsewhere; and

- (b) acts occurring outside Singapore, in relation to —
 - (i) futures contracts traded on a futures market in Singapore;
 - (ii) foreign exchange in connection with leveraged foreign exchange trading in Singapore; or
 - (iii) foreign exchange in connection with leveraged foreign exchange trading that is accessible from Singapore.

False trading

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

[FTA, s. 50]

Bucketing

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

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

[FTA, s. 51]

Manipulation of price of futures contract and cornering

208. No person shall, directly or indirectly —

- (a) manipulate or attempt to manipulate the price of a futures contract that may be dealt in on a futures market, or of any commodity which is the subject of such futures contract; or
- (b) corner, or attempt to corner, any commodity which is the subject of a futures contract.

[FTA, s. 53]

Fraudulently inducing persons to trade in futures contracts

209.—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be false, misleading or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing of any statement, promise or forecast that is false, misleading or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to trade in a futures contract or engage in leveraged foreign exchange trading.

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1) (d), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

[FTA, s. 55]

Employment of fraudulent or deceptive devices, etc.

210. No person shall, directly or indirectly, in connection with any transaction involving trading in a futures contract or leveraged foreign exchange trading —

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;
- (c) make any false statement of a material fact; or
- (d) omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

[FTA, s. 54]

Dissemination of information about illegal transactions

211. No person shall circulate, disseminate, or authorise, or be concerned in the circulation or dissemination of, any statement or

information to the effect that the price of a class of futures contracts or foreign exchange in connection with leveraged foreign exchange trading will, or is likely to, rise or fall or be maintained because of the market operations of one or more persons which, to his knowledge, are conducted in contravention of section 206, 207, 208, 209 or 210 if —

- (a) the person, or a person associated with the person, has conducted such market operations; or
- (b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.

[FTA, s. 52]

Penalties under this Division

212.—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 232 for the contravention.

[FTA, s. 56]

Division 3 — Insider Trading

Application of this Division

213. This Division shall apply to —

- (a) acts occurring within Singapore, in relation to —
 - (i) securities of any corporation, whether formed or carrying on business in Singapore or elsewhere;
 - (ia) securities of any business trust;
 - (ii) securities listed for quotation or quoted on a securities market in Singapore or elsewhere; or
 - (iii) securities traded on a futures market in Singapore or elsewhere; and

- (b) acts occurring outside Singapore, in relation to —
- (i) securities of a corporation that is formed or carries on business in Singapore;
 - (ia) securities of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;
 - (ii) securities listed for quotation or quoted on a securities market in Singapore; or
 - (iii) securities traded on a futures market in Singapore.

[Malaysia SIA, s. 89P]

[1/2005]

Interpretation of this Division

214. In this Division —

“debenture” has the same meaning as in section 2 and, in relation to a business trust, means a debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

“financial performance”, in relation to a business trust, means the performance of the business relating to the trust property of the business trust which is managed and operated by the trustee of the business trust;

“information” includes —

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;
- (b) matters relating to the intentions, or the likely intentions, of a person;
- (c) matters relating to negotiations or proposals with respect to —
 - (i) commercial dealings;
 - (ii) dealing in securities; or
 - (iii) trading in futures contract;
- (d) information relating to the financial performance of a corporation or business trust, or otherwise;
- (e) information that a person proposes to enter into, or had previously entered into one or more transactions or agreements in relation to securities or has prepared

or proposes to issue a statement relating to such securities; and

(f) matters relating to the future;

“purchase”, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party, acquiring the option or right under the contract, or taking an assignment of the option or right, whether or not on another’s behalf;

“securities” means —

(a) in relation to a corporation, for the purposes of sections 213 (a) (i) and (b) (i) and 218 —

(i) debentures, stocks or shares issued or proposed to be issued by a corporation;

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

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

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

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

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

(iv) a futures contract only if the commodity which is the subject of the futures contract is a share or stock of a corporation;

(b) in relation to a business trust, for the purposes of sections 213 (a) (ia) and (b) (ia) and 218 (1A) and (4A) —

(i) units in a business trust;

(ii) derivatives of units in a business trust;

(iii) debentures of a business trust; or

(iv) any right, option or derivative in respect of any such debentures; and

(c) in any other case —

- (i) debentures or stocks issued or proposed to be issued by a government;
- (ii) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;
- (iii) any right, option or derivative in respect of any such debentures, stocks or shares;
- (iv) any unit in a collective investment scheme;
- (v) any unit, or derivative of a unit, in a business trust;
- (vi) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
 - (A) the value or price of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust;
 - (B) the value or price of any group of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust; or
 - (C) an index of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust; or
- (vii) a futures contract only if the commodity which is the subject of the futures contract is a share or share index, or stock or stock index,

but does not include —

- (AA) bills of exchange;
- (BB) promissory notes; or
- (CC) certificates of deposit issued by a bank or finance company;

“sell”, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party —

- (a) grant or assign the option or right; or
 - (b) take, or cause to be taken, such action as releases the option or right,
- whether or not on another's behalf;

“trust property” has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A).

[1/2005]

[SIA, s. 2; Malaysia SIA, s. 89]

Information generally available

215. For the purposes of this Division, information is generally available if —

- (a) it consists of readily observable matter;
- (b) without limiting the generality of paragraph (a) —
 - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and
 - (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
- (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
 - (i) information referred to in paragraph (a);
 - (ii) information made known as referred to in paragraph (b) (i).

[Aust. Corporations 2001, s. 1002B]

Material effect on price or value of securities

216. For the purposes of this Division, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

[Aust. Corporations 2001, s. 1002C]

Trading and procuring trading in securities

217.—(1) For the purposes of this Division, trading in securities that is ordinarily permitted on the securities market or futures market shall be taken to be permitted on that securities market or futures market even though trading in any such securities on that securities market or futures market is suspended.

(2) For the purposes of this Division but without limiting the meaning that the expression “procure” has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

[Aust. Corporations 2001, s. 1002D]

Prohibited conduct by connected person in possession of inside information

218.—(1) Subject to this Division, where —

- (a) a person who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation; and
- (b) the connected person knows or ought reasonably to know that —
 - (i) the information is not generally available; and
 - (ii) if it were generally available, it might have a material effect on the price or value of those securities of that corporation,

subsections (2), (3), (4), (5) and (6) shall apply.

[1/2005]

(1A) Subject to this Division, where —

- (a) a person who is connected to any corporation, where such corporation —
 - (i) in relation to a business trust, acts as its trustee or manages or operates the business trust; or
 - (ii) in relation to a collective investment scheme that invests only in real estate and real estate-related assets specified by the Authority in the Code on

Collective Investment Schemes and all or any units of which are listed on a securities exchange, is the trustee or manager of the scheme,

possesses information concerning that corporation, business trust or scheme, as the case may be, that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation, of securities of that business trust or of units in that scheme, as the case may be; and

(b) the connected person knows or ought reasonably to know that —

- (i) the information is not generally available; and
- (ii) if it were generally available, it might have a material effect on the price or value of those securities of that corporation, of those securities of that business trust or of those units in that scheme, as the case may be,

subsections (2), (3), (4A), (5) and (6) shall apply.

[1/2005]

(2) The connected person must not (whether as principal or agent) —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities referred to in subsection (1) or (1A), as the case may be; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities referred to in subsection (1) or (1A), as the case may be.

[1/2005]

(3) Where trading in the securities referred to in subsection (1) or (1A) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the connected person must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the connected person knows, or ought reasonably to know, that the other person would or would be likely to —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or

- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

[1/2005]

(4) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation referred to in subsection (1), where the prosecution or plaintiff proves that the connected person was at the material time —

- (a) in possession of information concerning the corporation to which he was connected; and

- (b) the information was not generally available,

it shall be presumed, until the contrary is proved, that the connected person knew at the material time that —

- (i) the information was not generally available; and
- (ii) if the information were generally available, it might have a material effect on the price or value of securities of that corporation.

[1/2005]

(4A) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation which —

- (a) in relation to a business trust, acts as its trustee or manages or operates the business trust; or

- (b) in relation to a collective investment scheme, is the trustee or manager of the scheme,

as the case may be, referred to in subsection (1A), where the prosecution or plaintiff proves that the connected person was at the material time —

- (i) in possession of information concerning the corporation, business trust or scheme, as the case may be; and

- (ii) the information was not generally available,

it shall be presumed, until the contrary is proved, that the connected person knew at the material time that —

- (A) the information was not generally available; and

- (B) if the information were generally available, it might have a material effect on the price or value of securities of that corporation, of securities of that business trust or of units in the scheme, as the case may be.

[1/2005]

(5) In this Division —

- (a) “connected person” means a person referred to in subsection (1) or (1A) who is connected to a corporation; and
- (b) a person is connected to a corporation if —
 - (i) he is an officer of that corporation or of a related corporation;
 - (ii) he is a substantial shareholder within the meaning of Division 4 of Part IV of the Companies Act (Cap. 50) in that corporation or in a related corporation; or
 - (iii) he occupies a position that may reasonably be expected to give him access to information of a kind to which this section applies by virtue of —
 - (A) any professional or business relationship existing between himself (or his employer or a corporation of which he is an officer) and that corporation or a related corporation; or
 - (B) being an officer of a substantial shareholder within the meaning of Division 4 of Part IV of the Companies Act in that corporation or in a related corporation.

[1/2005]

(6) In subsection (5), “officer”, in relation to a corporation, includes —

- (a) a director, secretary or employee of the corporation;
- (b) a receiver, or receiver and manager, of property of the corporation;
- (c) a judicial manager of the corporation;
- (d) a liquidator of the corporation; and
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

Prohibited conduct by other persons in possession of inside information

219.—(1) Subject to this Division, where —

- (a) a person who is not a connected person referred to in section 218 (referred to in this section as the insider) possesses information that is not generally available but,

if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities; and

(b) the insider knows that —

(i) the information is not generally available; and

(ii) if it were generally available, it might have a material effect on the price or value of those securities,

subsections (2) and (3) shall apply.

(2) The insider must not (whether as principal or agent) —

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or

(b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

(3) Where trading in the securities referred to in subsection (1) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —

(a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or

(b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

[Aust. Corporations 2001, s. 1002G]

Not necessary to prove intention to use

220.—(1) For the avoidance of doubt, in any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or plaintiff to prove that the accused person or defendant intended to use the information referred to in section 218 (1) (a) or (1A) (a) or 219 (1) (a) in contravention of section 218 or 219, as the case may be.

[1/2005]

(2) In any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or plaintiff

to prove the absence of facts or circumstances which if they existed would, by virtue of sections 222 to 230 or any regulations made under section 341, preclude the act from constituting a contravention of section 218 or 219, as the case may be.

[Malaysia SIA, s. 89F]

Penalties under this Division

221.—(1) A person who contravenes section 218 or 219, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after a court has made an order against him for the payment of a civil penalty under section 232 in respect of that contravention.

[SIA, s. 104]

Exception for redemption of units in collective investment scheme

222. Sections 218 (2) and 219 (2) shall not apply in respect of the redemption of units in a collective investment scheme by a trustee or manager under a trust deed relating to that collective investment scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less —

(a) any liabilities of that collective investment scheme to which the units relates; and

(b) any reasonable charge for purchasing the units.

[1/2005]

[Malaysia SIA, s. 89N]

Exception for underwriters

223.—(1) Sections 218 (2) and 219 (2) shall not apply in respect of —

(a) subscribing for, or purchasing, securities under an underwriting agreement or a sub-underwriting agreement;

(b) entering into an agreement referred to in paragraph (a); or

(c) selling securities subscribed for, or purchased, under an agreement referred to in paragraph (a).

[1/2005]

(2) Sections 218 (3) and 219 (3) shall not apply in respect of the communication of information in relation to securities —

- (a) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or
- (b) by a person who may be required under an underwriting agreement to subscribe for, or purchase, any such securities if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:
 - (i) enter into a sub-underwriting agreement in relation to any such securities;
 - (ii) subscribe for, or purchase, any such securities.

[Aust. Corporations 2001, s. 1002J]

[1/2005]

Exception for purchase pursuant to legal requirement

224.—(1) Sections 218 (2) and 219 (2) shall not apply in respect of the purchase of securities pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

[16/2003]

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

[16/2003]

[Aust. Corporations 2001, s. 1002K]

Exception for information communicated pursuant to legal requirement

225. Sections 218 (3) and 219 (3) shall not apply in respect of the communication of information pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

[Aust. Corporations 2001, s. 1002L]

Attribution of knowledge within corporations

226.—(1) For the purposes of this Division —

- (a) a corporation is taken to possess any information which an officer of the corporation possesses and which came into his

possession in the course of the performance of duties as such an officer; and

- (b) if an officer of a corporation knows or ought reasonably to know any matter or thing because he is an officer of the corporation, it is to be presumed, until the contrary is proved, that the corporation knows or ought reasonably to know that matter or thing.

(2) A corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the corporation if —

- (a) the decision to enter into the transaction or agreement was taken on its behalf by a person other than that officer;
- (b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person who made the decision and that no advice with respect to the transaction or agreement was given to that person by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

[Malaysia SIA, s. 89G]

Attribution of knowledge within partnerships and limited liability partnerships

227.—(1) For the purposes of this Division —

- (a) a partner of a partnership or a limited liability partnership (as the case may be) is taken to possess any information —
 - (i) which another partner of the partnership or limited liability partnership (as the case may be) possesses and which came into such other partner's possession in his capacity as a partner of the partnership or limited liability partnership (as the case may be); or
 - (ii) which an employee of the partnership or a manager of a limited liability partnership (as the case may be) possesses and which came into the possession of such an employee or manager in the course of the performance of his duties as such an employee or manager; and

- (b) if a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (as the case may be) knows or ought reasonably to know any matter or thing in his capacity as such a partner, manager or employee, it is to be presumed that every partner of the partnership or limited liability partnership (as the case may be) knows or ought reasonably to know that matter or thing.

[5/2005]

(2) The partners of a partnership or limited liability partnership (as the case may be) do not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the partners, or a manager or managers, or an employee or employees, of the partnership or limited liability partnership (as the case may be) are in actual possession of information if —

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership or limited liability partnership by any one or more of the following persons:
 - (i) a partner who is taken to have possessed the information merely because another partner, or a manager or employee, of the partnership or limited liability partnership, was in possession of the information;
 - (ii) an employee of the partnership or limited liability partnership or a manager of the limited liability partnership who was not in possession of the information;
- (b) the partnership or limited liability partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

[5/2005]

(3) A partner of a partnership or limited liability partnership (as the case may be) does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement otherwise than on behalf of

the partnership or limited liability partnership merely because he is taken to possess information that is in the possession of another partner, a manager or an employee of the partnership.

[Malaysia SIA, s. 89H]

[5/2005]

Exception for knowledge of person's own intentions or activities

228. An individual does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

[Aust. Corporations 2001, s. 1002P]

Exception for corporations and its officers, etc.

229.—(1) A corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because it is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities.

(2) Subject to subsection (3), a corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because an officer of the corporation is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(3) Subsection (2) shall not apply unless the officer of the corporation mentioned in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

(4) Subject to subsection (5), a person does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement on behalf of a corporation in relation to securities merely because he is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4) shall not apply unless the person became aware of the matters referred to in that subsection in the course of the

performance of duties as an officer of the corporation or in the course of acting as an agent of the corporation.

[Malaysia SIA, s. 89K]

Unsolicited transactions by holder of capital markets services licence and representatives

230.—(1) The holder of a capital markets services licence to deal in securities or trade in futures contracts, or a representative of such a holder does not contravene section 218 (2) or 219 (2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, securities that are traded on the stock market or futures market if —

- (a) the licensed person entered into the transaction or agreement concerned on behalf of another person (referred to in this section as the principal) under a specific instruction by the principal to enter into that transaction or agreement which was not solicited by the licensed person;
- (b) the licensed person has not given any advice to the principal in relation to the transaction or agreement or otherwise sought to procure the principal's instructions to enter into the transaction or agreement; and
- (c) the principal is not an associate of the licensed person.

(2) Nothing in this section shall affect the application of section 218 (2) or 219 (2) in relation to the principal.

[Malaysia SIA, s. 89M]

Parity of information defences

231.—(1) In any proceedings against a person for a contravention of section 218 (2) or 219 (2) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person's possession, it is a defence if the court is satisfied that —

- (a) the information came into the first-mentioned person's possession solely as a result of the information having been made known as referred to in section 215 (b) (i); or
- (b) the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

(2) In an action against a person for a contravention of section 218 (3) or 219 (3) because the person communicated information, or caused information to be communicated, to another person, it is a defence if the court is satisfied that —

- (a) the information came into the first-mentioned person's possession solely as a result of the information having been made known as referred in section 215 (b) (i); or
- (b) the other person knew, or ought reasonably to have known, of the information before the information was communicated.

[Aust. Corporations 2001, s. 1002T]

Division 4 — Civil Liability

Civil penalty

232.—(1) Whenever it appears to the Authority that any person has contravened any provision in this Part, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which resulted in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum —

- (a) not exceeding 3 times —
 - (i) the amount of the profit that the person gained; or
 - (ii) the amount of the loss that he avoided,
as a result of the contravention; or
- (b) equal to \$50,000 if the person is not a corporation, or \$100,000 if the person is a corporation,

whichever is the greater.

(3) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which did not result in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(4) Notwithstanding subsections (2) and (3), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order

with or without admission of a contravention of a provision in this Part and the order may be made on such terms as may be agreed between the Authority and the defendant.

(5) Nothing in this section shall be construed to prevent the Authority from entering into an agreement with any person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) or (3) for a contravention of any provision in this Part.

(6) A civil penalty imposed under this section shall be payable to the Authority.

(7) If the person fails to pay the civil penalty imposed on him within the time specified in the court order referred to in subsection (4) or specified under the agreement referred to in subsection (5), the Authority may recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

[1/2005]

(8) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, shall also be available to a defendant to an action under this section in respect of that contravention.

[SIA, s. 104A]

Action under section 232 not to commence, etc., in certain situations

233.—(1) An action under section 232 shall not be commenced after the expiration of 6 years from the date of the contravention of any of the provisions in this Part.

(2) An action under section 232 shall not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of any of the provisions in this Part, except where he has been acquitted on the ground of the withdrawal of the charge against him.

(3) An action under section 232 shall be stayed after criminal proceedings have been commenced against the person for the contravention of any of the provisions in this Part, and may thereafter be continued only if —

- (a) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or

- (b) the charge against him in respect of that contravention has been withdrawn.

[SIA, s. 104B]

Civil liability

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

- (a) contemporaneously with the contravention, had subscribed for, purchased or sold securities, or entered into futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and
- (b) had suffered loss by reason of the difference between —
 - (i) the price at which the securities, futures contracts, or contracts in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention; and
 - (ii) the price at which the securities, futures contracts or contracts in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention had not occurred.

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

(3) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, shall also be available to a defendant to an action under this section in respect of the contravention.

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

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

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

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

- (a) the amount of the profit that the contravening person gained; or
- (b) the amount of the loss that he avoided,

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

[SIA, s. 104C]

Action under section 234 not to commence, etc., in certain situations

235.—(1) Except with the leave of court, no action under section 234 may be brought against the contravening person in respect of a

contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss after the commencement of —

- (a) criminal proceedings under this Part against the contravening person for the same contravention; or
- (b) an action under section 232 against the contravening person for the same contravention.

(2) Any action under section 234 against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss, being an action that is pending on the date of commencement of —

- (a) criminal proceedings under this Part against the contravening person for the same contravention; or
- (b) an action under section 232 against the contravening person for the same contravention,

shall be stayed, and may not thereafter be continued except with the leave of court.

(3) Leave under subsection (1) or (2) may not be granted if a date has been fixed by a court under section 236 (1) 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 236 as that court may issue in his case.

[SIA, s. 104D]

Civil liability in event of conviction, etc.

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

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

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

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

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

- (a) equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 234 against the contravening person himself; or
- (b) equal to the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,

whichever is the lesser.

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

- (a) the conviction is upheld on appeal, revision or otherwise;
- (b) the conviction is not subject to further appeal;
- (c) no notice of appeal against the conviction is lodged within the time prescribed by section 247 of the Criminal Procedure Code (Cap. 68); or
- (d) any appeal against the conviction is withdrawn.

(5) For the purposes of this section, an order imposing a civil penalty is made final if —

- (a) the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;
- (b) the order is not subject to further appeal;
- (c) no notice of appeal against the imposition of the penalty is lodged within the time prescribed by Rules of Court (Cap. 322, R 5) made under section 238; or
- (d) any appeal against the imposition of the penalty is withdrawn.

[SIA, s. 104E]

Jurisdiction of District Court

237. A District Court shall have jurisdiction to hear and determine any action under section 232, 234 or 236 regardless of the monetary amount.

[SIA, s. 104F]

Rules of Court

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

- (a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under sections 232, 234 and 236; and
- (b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

(2) Without prejudice to the generality of subsection (1), Rules of Court may, in relation to proceedings under section 236 —

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

[SIA, s. 104G]

PART XIII**OFFERS OF INVESTMENTS***Division 1 — Shares and Debentures**Subdivision (1) — Interpretation***Preliminary provisions**

239.—(1) In this Division —

“borrowing entity” means an entity that is or will be under a liability (whether or not such liability is present or future) to repay any money received by it in response to an invitation to subscribe for or purchase debentures of the entity;

“chief executive officer”, in relation to a corporation, means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;

“control”, in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

- (a) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and
- (b) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

“debenture” includes debenture stock, bonds, notes and any other debt securities issued by a corporation or any other entity, whether or not constituting a charge on the assets of the issuer but does not include —

- (a) a cheque, letter of credit, order for the payment of money or bill of exchange;
- (b) subject to the regulations made under this Act, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months; or
- (c) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

“debenture issuance programme” means any scheme or arrangement by an entity for the issue of debentures or units of debentures where only part of the maximum amount or

aggregate number of debentures or units of debentures under the programme is offered initially and a further tranche or tranches may be offered subsequently;

“expert” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“guarantor entity”, in relation to a borrowing entity, means an entity that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing entity in response to an invitation to subscribe for or purchase debentures of the borrowing entity;

“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

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

“minimum subscription”, in relation to any securities offered for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which must be raised by the issue of the securities so offered, failing which no securities will be allotted or issued;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, securities to be issued or sold and which contains the information required to be included in a prospectus under section 243, except for such information as may be prescribed by the Authority;

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

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

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make

an offer of securities, and includes any document deemed to be a prospectus under section 257, but does not include —

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

“recognised securities exchange” means a corporation which has been declared by the Authority, by order published in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

“related party” means —

- (a) in relation to an entity —
 - (i) a director or an equivalent person of the entity;
 - (ii) the chief executive officer or equivalent person of the entity;
 - (iii) a person who controls the entity;
 - (iv) a related corporation;
 - (v) any other entity controlled by it;
 - (vi) any other entity controlled by the person referred to in sub-paragraph (iii); and
 - (vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and
- (b) in relation to an individual —
 - (i) his immediate family;
 - (ii) a trustee of any trust of which the individual or any member of the individual’s immediate family is —
 - (A) a beneficiary; or
 - (B) where the trust is a discretionary trust, a discretionary object,when the trustee acts in that capacity; and
 - (iii) any corporation in which he and his immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 241 (1), as the case may be;

“securities” means debentures or units of debentures of an entity, or shares or units of shares of a corporation;

“statutory meeting” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 241 (1), as the case may be;

“underlying entity”, in relation to an offer of units of shares or debentures, means the entity the shares or debentures of which are the subject of the offer;

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

[16/2003; 31/2004; 1/2005]

(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division —

- (a) any invitation to a person to deposit money with or to lend money to an entity shall be deemed to be an offer of debentures of the entity; and
- (b) any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation shall be deemed to be a debenture.

[1/2005]

(3A) Notwithstanding subsection (3) —

- (a) any invitation to a person by a prescribed entity to make a deposit with the prescribed entity is not an offer of debentures; and

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

- (i) any certificate of deposit;
- (ii) any other document acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the prescribed entity in respect of any deposit that is or may be made with the prescribed entity.

[1/2005]

(4) In subsections (3A) and (5) —

“deposit” has the same meaning as in section 4B (4) of the Banking Act (Cap. 19);

“prescribed entity” means —

- (a) any bank licensed under the Banking Act; or
- (b) any entity or any entity of a class which has been declared by the Authority, by order published in the *Gazette*, to be a prescribed entity for the purposes of this subsection.

[1/2005]

(5) The Authority may, by notice in writing —

- (a) impose such conditions or restrictions on a prescribed entity as it thinks fit; and
- (b) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity shall comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

[1/2005]

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

[1/2005]

(6) For the purposes of this Division, a person makes an offer of any securities if, and only if, as principal —

- (a) he makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise

to a contract for the issue or sale of those securities by him or another person with whom he has made arrangements for that issue or sale; or

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

[1/2005]

(7) In subsection (6), “sale” includes any disposal for valuable consideration.

[1/2005]

(8) This Division applies only in relation to offers of securities made on or after the commencement of this Division.

[1/2005]

[Companies, s. 4]

Authority may disapply this Division to certain offers

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

- (a) an offer of securities is one to which (but for this section) both this Division and Division 2 apply; and
- (b) the Authority has by order published in the *Gazette* declared that this Division shall not apply to that offer or a class of offers to which that offer belongs,

then this Division shall not apply to that offer.

[1/2005]

Subdivision (2) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

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

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

- (b) complies with such requirements as may be prescribed by the Authority.

[16/2003; 1/2005]

(2) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

(3) A preliminary document referred to in subsection (2) must contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

(4) Notwithstanding subsection (1), an offer of securities may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this section as a profile statement), instead of a prospectus, if —

- (a) a prospectus in respect of such offer is prepared in accordance with section 243, and the profile statement is prepared in accordance with section 246;
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (4A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer complies with such requirements as may be prescribed by the Authority.

[16/2003; 1/2005]

(4A) The copy of a prospectus or profile statement lodged with the Authority shall be signed —

- (a) where the person making the offer is the issuer —
 - (i) in a case where the issuer is not the government of a State, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or
 - (ii) in a case where the issuer is the government of a State, by an official of that government who is authorised to sign the prospectus on its behalf;

- (b) where the person making the offer is an individual and is not the issuer —
 - (i) in a case where the issuer is not the government of a State —
 - (A) by that person; and
 - (B) if the issuer is controlled by that person, one or more of his related parties, or that person and one or more of his related parties, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or
 - (ii) in a case where the issuer is the government of a State, by that person;
- (c) where the person making the offer is an entity (not being the government of a State) and is not the issuer —
 - (i) in a case where the issuer is not the government of a State —
 - (A) by every director or equivalent person of that entity; and
 - (B) if the issuer is controlled by that entity, one or more of its related parties, or that entity and one or more of its related parties, by every director or equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or
 - (ii) in a case where the issuer is the government of a State, by every director or equivalent person of that entity; and
- (d) where the person making the offer is the government of a State and is not the issuer —
 - (i) in a case where the issuer is not the government of another State —
 - (A) by an official of the government of the State who is authorised to sign the prospectus on its behalf; and

(B) if the issuer is controlled by that government, one or more of its related parties, or that government and one or more of its related parties, by every director or every equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of another State, by an official of the government of the first-mentioned State who is authorised to sign the prospectus on its behalf.

[1/2005]

(4B) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(a) by that director or equivalent person; or

(b) by a person who is authorised in writing by that director or equivalent person to sign on his behalf.

[1/2005]

(4C) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(a) by that proposed director or equivalent person; or

(b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his behalf.

[1/2005]

(5) No person shall make any offer of securities of an entity that has not been formed or does not exist.

[1/2005]

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

(7) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(8) The Authority may register a prospectus or a profile statement on any day between the 14th and 21st days (both days inclusive) from the date of lodgment thereof with the Authority, unless —

- (a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (15);
- (b) the Authority gives to the person making the offer a notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (15);
- (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends —
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (15); or
- (d) the person making the offer gives a notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

[1/2005]

(8A) Where, after a notice of an opportunity to be heard has been given under subsection (8) (a), (b) (ii) or (c) (ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date shall not be earlier than the 14th day from the date of lodgment of the prospectus or profile statement with the Authority.

[1/2005]

(9) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (4A) and which contains the information required to be stipulated in the prospectus under section 243, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.

[1/2005]

(9A) A person making an offer of securities may lodge any amendment to a prospectus or profile statement in respect of that offer

at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

[1/2005]

(10) Subject to subsection (11) —

- (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged; and
- (b) where any amendment to a profile statement is lodged, the profile statement shall be deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged.

[16/2003; 1/2005]

(11) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended shall be deemed, for the purposes of subsection (8), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

[1/2005]

(11A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

[16/2003]

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

- (a) a prospectus or profile statement lodged with the Authority under this section; and
 - (b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A (1),
- and, for the purposes of this subsection, the person making the offer shall provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

[16/2003; 1/2005]

(13) The Authority shall refuse to register a prospectus if —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included in it under section 243;
- (c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (4A);

- (d) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
- (e) any written consent of an expert to the issue of the prospectus required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (ea) any written consent of an issue manager to the issue of the prospectus required under section 249A (1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (eb) any written consent of an underwriter to the issue of the prospectus required under section 249A (2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

[16/2003; 1/2005]

- (14) The Authority shall refuse to register a profile statement if —
- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
 - (b) there is an omission from the profile statement of information required by section 246 to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;
 - (c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (4A);
 - (ca) any written consent of an expert to the issue of the profile statement required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (cb) any written consent of an issue manager to the issue of the profile statement required under section 249A (1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (cc) any written consent of an underwriter to the issue of the profile statement required under section 249A (2), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (d) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;

- (e) the prospectus has not been registered by the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

[16/2003; 1/2005]

(15) The Authority shall not refuse to register a prospectus under subsection (13) or a profile statement under subsection (14) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer or, where applicable, the underlying entity 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, where applicable, the underlying entity.

[1/2005]

(16) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (13) or (14), appeal to the Minister, whose decision shall be final.

[1/2005]

(17) If —

- (a) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or
- (b) an application to subscribe for or purchase securities is accepted, or securities are allotted, issued or sold, before a prospectus and, where applicable, profile statement in respect of the securities has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

- (i) the issue, circulation or distribution of the prospectus or profile statement;

(ii) the acceptance of the application to subscribe for or purchase the securities; or

(iii) the allotment, issue or sale of the securities,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(18) This section is subject to section 240A.

[1/2005]

(19) For the purposes of subsections (13) (a) and (14) (a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

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

[Companies, s. 43, s. 45A and s. 50; Aust. Corporations 2001, s. 721]

Debenture issuance programme

240A.—(1) A prospectus for every offer of debentures or units of debentures that is part of a debenture issuance programme shall comprise —

(a) a base prospectus applicable to every offer under the debenture issuance programme; and

(b) a pricing statement applicable to that particular offer.

[1/2005]

(2) A profile statement for every offer of debentures or units of debentures that is part of a debenture issuance programme shall comprise —

(a) an extract from, or an abridged version of, a base prospectus referred to in subsection (1) (a) (referred to in this section as a base profile statement); and

(b) a pricing statement applicable to that particular offer.

[1/2005]

(3) In respect of an offer referred to in subsection (1), the requirements of section 240 (1) (a) (ii) and (iii) are satisfied if a copy of the base prospectus and a copy of the pricing statement, each of which is signed in accordance with section 240 (4A), have been lodged

with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

[1/2005]

(4) In respect of an offer referred to in subsection (2), the requirements of section 240 (4) (b) and (c) are satisfied if a copy of the base profile statement and a copy of the pricing statement, each of which is signed in accordance with section 240 (4A), have been lodged with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

[1/2005]

(5) For the avoidance of doubt, where the base prospectus or base profile statement in relation to a debenture issuance programme has been lodged with and registered by the Authority, it shall be treated as having been lodged with and registered by the Authority in respect of every offer under that programme.

[1/2005]

(6) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (1), a reference to a prospectus shall, unless the context otherwise requires or the Authority has prescribed otherwise, be read as a reference to both the base prospectus and the pricing statement.

[1/2005]

(7) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (2), a reference to a profile statement shall, unless the context otherwise requires or the Authority has prescribed otherwise, be read as a reference to both the base profile statement and the pricing statement.

[1/2005]

(8) The Authority may, by regulations, prescribe how the provisions of this Subdivision shall apply to an offer referred to in subsection (1) or (2).

[1/2005]

(9) For the avoidance of doubt, a pricing statement may be registered by the Authority at any time after its lodgment with the Authority.

[1/2005]

Lodging supplementary document or replacement document

241.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of securities, the person making that offer becomes aware of —

- (a) a false or misleading statement in the prospectus or profile statement;

- (b) an omission from the prospectus of any information that should have been included in it under section 243, or an omission from the profile statement of any information that should have been included in it under section 246, as the case may be; or
- (c) a new circumstance that —
 - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
 - (ii) would have been required by —
 - (A) section 243 to be included in the prospectus; or
 - (B) section 246 to be included in the profile statement,if it had arisen before the prospectus or the profile statement, as the case may be, was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

[16/2003; 1/2005]

(1A) If, after a base prospectus or a base profile statement referred to in section 240A is registered but before the expiration of 24 months from the registration of the base prospectus by the Authority, the person making that offer intends to update any information or include any new information in the base prospectus or base profile statement, the person may lodge a supplementary or replacement document with the Authority, provided that no offer to which the base prospectus or base profile statement relates is subsisting at the time of the lodgment.

[1/2005]

(1B) Subsections (7) to (16) shall not apply to a supplementary or replacement document which is lodged under subsection (1A).

[1/2005]

(1C) For the purposes of subsection (1A), an offer shall not be treated as subsisting if —

- (a) a pricing statement in respect of the offer of debentures or units of debentures has not been registered by the Authority under section 240A; or

- (b) a pricing statement in respect of the offer of debentures or units of debentures has been registered by the Authority under section 240A, and —
 - (i) the offer has closed with no application to subscribe for or purchase the debentures or units of debentures having been received or accepted; or
 - (ii) one or more applications to subscribe for or purchase the debentures or units of debentures have been received or accepted, and —
 - (A) in a case where the debentures or units of debentures are or will be listed for quotation on a securities exchange, trading in them has commenced; or
 - (B) in any other case, all of those debentures or units of debentures have been issued or sold.
- [1/2005]*
- (2) At the beginning of a supplementary document, there shall be —
 - (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
 - (b) an identification of the prospectus or profile statement it supplements;
 - (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and
 - (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.
- [1/2005]*
- (3) At the beginning of a replacement document, there shall be —
 - (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
 - (b) an identification of the prospectus or profile statement it replaces.
 - (4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.
 - (5) The person making the offer shall take reasonable steps —

- (a) to inform potential investors of the lodgment of any supplementary or replacement document under subsection (1) or (1A); and
- (b) to make available to them the supplementary document or replacement document.

[1/2005]

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

- (a) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and
- (b) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

[16/2003; 1/2005]

(6A) (*Deleted by Act 1/2005*)

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

- (a) where the replacement document is a replacement prospectus, the prospectus in relation to the offer shall be taken to be the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement in relation to the offer shall be taken to be the replacement profile statement.

[16/2003; 1/2005]

(7) If a supplementary document or replacement document is lodged with the Authority, the offer shall be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

[1/2005]

(8) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for securities, then —

- (a) where the securities have not been issued to the applicants, the person making the offer —

- (i) shall —
 - (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; and
 - (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;
- (ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or
- (iii) shall —
 - (A) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled; and
 - (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or
- (b) where the securities have been issued to the applicants, the person making the offer —
 - (i) shall —
 - (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of

the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in; and

- (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;
- (ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in; or
- (iii) shall —
 - (A) treat the issue of the securities as void, in which case the issue shall be deemed void; and
 - (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities.

[1/2005]

(9) Subsections (8) (b) and (11) have effect notwithstanding sections 76 and 76A, and Division 3A of Part IV, of the Companies Act (Cap. 50).

[42/2005]

(10) An applicant who wishes to exercise his option under subsection (8) (a) (i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days from the receipt of such

notification, pay to the applicant all moneys paid by the applicant on account of his application for the securities.

[1/2005]

(11) An applicant who wishes to exercise his option under subsection (8) (b) (i) or (ii) to return securities issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to be evidence of title to those securities to that person, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by the applicant for the securities, and the issue of those securities shall be deemed to be void.

[1/2005]

(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase securities, then —

(a) where the securities have not been transferred to the applicants, the person making the offer —

(i) shall —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or

replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or

(iii) shall —

(A) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or

(b) where the securities have been transferred to the applicants, the person making the offer —

(i) shall —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those securities which they do not wish to retain title in; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the

person making the offer, those securities which they do not wish to retain title in; or

(iii) shall treat the sale of the securities as void, in which case the sale shall be deemed void, and shall —

(A) if documents purporting to evidence title to the securities (referred to in this paragraph as the title documents) have been issued to the applicants —

(AA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return the title documents to the person making the offer within 14 days from the date of lodgment of the supplementary document or replacement document; and

(AB) within 7 days from the date of receipt of the title documents or the date of lodgment of the supplementary document or replacement document, whichever is the later, pay to the applicants all moneys paid by them for the securities; or

(B) if no title documents have been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities.

[1/2005]

(13) An applicant who wishes to exercise his option under subsection (12) (a) (i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days of the receipt of such notification, pay to the applicant all moneys paid by him on account of his application for the securities.

[1/2005]

(14) An applicant who wishes to exercise his option under subsection (12) (b) (i) or (ii) to return securities sold to him shall,

within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to evidence title to those securities to the person making the offer, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by him for the securities and the sale of the securities shall be deemed to be void.

[1/2005]

(15) Any person who contravenes subsection (8) or (12) 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.

(16) Any person who contravenes any other provision of 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.

(17) For the purposes of subsection (1) (a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Companies, s. 50A ; Aust. Corporations 2001, s. 719]

Stop order for prospectus and profile statement

242.—(1) If a prospectus has been registered and —

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

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

[16/2003; 1/2005]

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

the Authority may by an order in writing (referred to in this section as a stop order) served on the person making the offer of securities to which the profile statement relates direct that no or no further securities be allotted, issued or sold.

[16/2003; 1/2005]

(3) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the securities to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on a securities exchange and trading in them has commenced.

[1/2005]

(4) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer or, where applicable, the underlying entity is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (aa) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or, where applicable, the underlying entity.

[16/2003; 1/2005]

(5) Where applications to subscribe for securities to which the prospectus or profile statement relates have been made prior to the stop order, then —

- (a) where the securities have not been issued to the applicants —
 - (i) the applications shall be deemed to have been withdrawn and cancelled; and
 - (ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or
- (b) where the securities have been issued to the applicants —
 - (i) the issue of the securities shall be deemed to be void; and
 - (ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities.

[1/2005]

(6) Subsection (5) (b) has effect notwithstanding sections 76 and 76A, and Division 3A of Part IV, of the Companies Act (Cap. 50).

[42/2005]

(7) Where applications to purchase securities to which the prospectus or profile statement relates have been made prior to the stop order, then —

- (a) where the securities have not been transferred to the applicants —
 - (i) the applications shall be deemed to have been withdrawn and cancelled; and
 - (ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities; or
- (b) where the securities have been transferred to the applicants, the sale shall be deemed to be void, and the person making the offer shall —
 - (i) if documents purporting to evidence title to the securities have been issued to the applicants —
 - (A) within 7 days from the date of the stop order, inform the applicants to return such documents to the person making the offer within 14 days from that date; and
 - (B) within 7 days from the date of the receipt of those documents or the date of the stop order,

whichever is the later, pay to the applicants all moneys paid by them for the securities; or

- (ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities.

[1/2005]

(8) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person making the offer directing that no or no further securities to which the prospectus or profile statement relates be allotted, issued or sold.

[1/2005]

(9) An interim stop order shall, unless revoked by the Authority, be in force —

(a) in a case where —

- (i) it is served during a hearing under subsection (4); or
- (ii) a hearing under subsection (4) is commenced while it is in force,

until the Authority makes an order under subsection (1) or (2); and

- (b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

[16/2003]

(10) Subsections (5) and (7) shall not apply where only an interim stop order has been served.

(11) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(12) Any person who contravenes subsection (5) or (7) 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.

(13) For the purposes of subsections (1) (a) and (2) (a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Aust. Corporations 2001, s. 739]

Contents of prospectus

243.—(1) A prospectus for an offer of securities shall contain —

- (a) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and
- (b) the matters prescribed by the Authority.

[1/2005]

(2) The prospectus shall, with respect to subsection (1) (a), contain such information —

- (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and
- (b) only to the extent that a person whose knowledge is relevant —
 - (i) actually knows the information; or
 - (ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

(3) The matters referred to in subsection (1) (a) shall relate to —

- (a) the rights and liabilities attaching to the securities;
- (b) the assets and liabilities, profits and losses, financial position and performance, and prospects of the issuer;
- (c) if the underlying entity is controlled by —
 - (i) the person making the offer;
 - (ii) one or more of the related parties of the person making the offer; or
 - (iii) the person making the offer and one or more of his related parties,

the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; and

- (d) in the case of an offer of units of shares or debentures, where the person making the offer, or an entity which is controlled by —

- (i) the person making the offer;
- (ii) one or more of the related parties of the person making the offer; or
- (iii) the person making the offer and one or more of his related parties,

is or will be required to issue or deliver the relevant securities, or to meet financial or contractual obligations to the holders of those units, the capacity of that person or entity to issue or deliver the relevant securities, or the ability of that person or entity to meet those financial or contractual obligations.

[1/2005]

(4) In deciding what information shall be included under subsection (1) (a), regard shall be had to —

- (a) the nature of the securities and the nature of the entity concerned;
- (b) the matters that likely investors may reasonably be expected to know; and
- (c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.

[1/2005]

(5) For the purposes of subsection (2) (b), a person's knowledge is relevant only if he is one of the following persons:

- (a) the person making the offer;
- (b) if the person making the offer is an entity, a director or an equivalent person of the entity;
- (c) the issuer;
- (d) a director or an equivalent person, or a proposed director or an equivalent person, of the issuer;
- (da) a person named in the prospectus with his consent as an underwriter to the issue or sale;
- (e) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;
- (f) a person named in the prospectus with his consent as having made a statement —
 - (i) that is included in the prospectus; or
 - (ii) on which a statement made in the prospectus is based;

- (g) a person named in the prospectus with his consent as having performed a particular professional or advisory function.

[1/2005]

(6) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

[1/2005]

(7) This section does not affect any liability that a person has under any other law.

[Companies, s. 45; Aust. Corporations 2001, s. 710]

244. (*Repealed by Act 16/2003*)

Retention of over-subscriptions and statement of asset-backing in debenture issues

245.—(1) An entity shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the entity has specified in the prospectus —

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

[1/2005]

(2) Subject to regulations made by the Authority for the purposes of this subsection, where an entity specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions —

- (a) the entity shall not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the entity and of its guarantor entities; and
- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the entity would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

[1/2005]

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

[1/2005]

[Companies, s. 49]

Contents of profile statement

246.—(1) A profile statement for an offer of securities shall contain —

(a) the following particulars:

- (i) identification of the person making the offer and, where the person making the offer is not the issuer, the issuer and, where applicable, the underlying entity;
- (ii) identification of the persons signing the profile statement;
- (iii) the nature of the securities;
- (iv) the nature of the risks involved in investing in the securities;
- (v) details of all amounts payable in respect of the securities (including any amount by way of fee, commission or charge);

(b) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and

(c) a statement that the persons referred to in section 240 (4A) who have signed the profile statement are satisfied that the profile statement contains a fair summary of the key information in the prospectus.

[1/2005]

(2) A profile statement shall not contain —

- (a) any statement that is false or misleading in the form and context in which it is included;
- (b) any material information that is not contained in the prospectus; and
- (c) any material information that differs in any material particular from that set out in the prospectus.

[1/2005]

(3) For the purposes of subsection (2) (a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Companies, s. 45A; Aust. Corporations 2001, s. 714]

Exemption from requirements as to form or content of prospectus or profile statement

247.—(1) The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.

[16/2003]

(2) The Authority shall not grant an exemption under subsection (1) unless it is of the opinion that —

- (a) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or
- (b) it would not be prejudicial to the public interest if the requirement in respect of which exemption has been applied for were dispensed with.

[16/2003]

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

[16/2003]

(4) *(Deleted by Act 16/2003)*

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

[Companies, s. 46]

Exemption for certain governmental and international entities as regards signing of copy of prospectus or profile statement by all directors or equivalent persons

248.—(1) This section shall apply only to entities that are both of a governmental and international character.

[1/2005]

(2) An entity to which this section applies may apply in writing to the Authority for an exemption from the requirements of section 240 (1) (a) (ii), (4) (b), (4A), (13) (c) and (14) (c) and the Authority may, if it considers those requirements unduly burdensome on the entity, exempt such entity from complying therewith.

[1/2005]

(3) The Authority may subject such exemption to a requirement that such minimum number of directors or equivalent persons who are resident in Singapore as the Authority may, in that case, decide must sign the copy of the prospectus or profile statement.

[1/2005]

(4) In the event that no director or equivalent person is resident in Singapore, the Authority may permit a duly authorised agent to sign the prospectus or profile statement so long as such authorisation is supported by a resolution of the board of the entity.

[1/2005]

(5) The Authority may, if satisfied that a particular entity cannot comply with any of the requirements in subsection (3) or (4), grant the exemption applied for.

[1/2005]

(6) Any prospectus or profile statement that complies with the terms of exemption granted by the Authority shall be deemed to be a prospectus or profile statement for the purposes of this Division and a copy of such prospectus or profile statement shall be registered by the Authority.

[Companies, s. 51]

Expert's consent to issue of prospectus or profile statement containing statement by him

249.—(1) Where an offer of securities is made in or accompanied by a prospectus or profile statement which includes a statement purporting to be made by, or based on a statement made by, an expert, the prospectus or profile statement shall not be issued unless —

(a) the expert has given, and has not before the registration of the prospectus or profile statement, as the case may be,

withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and

- (b) there appears in the prospectus or profile statement, as the case may be, a statement that the expert has given and has not withdrawn his consent.

[1/2005]

(1A) Every person making the offer shall cause a true copy of every written consent referred to in subsection (1) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if the issuer has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

[1/2005]

(1B) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (1A) for a period of at least 6 months after the registration of the prospectus or profile statement.

[1/2005]

(2) If any prospectus or profile statement is issued in contravention of subsection (1), the person making the offer and every person who is knowingly a party to the issue thereof 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.

[16/2003; 1/2005]

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

[16/2003; 1/2005]

(4) Any person who contravenes any of the conditions or restrictions imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of

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

[16/2003]

[Companies, s. 54]

Consent of issue manager and underwriter to being named in prospectus or profile statement

249A.—(1) Where an offer of securities is made in or accompanied by a prospectus or profile statement in which a person is named as the issue manager to the offer, the prospectus or profile statement shall not be issued unless —

- (a) the person has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to being named in the prospectus or profile statement as issue manager to that offer; and
- (b) there appears in the prospectus or profile statement, as the case may be, a statement that the person has given and has not withdrawn his consent.

[1/2005]

(2) Where an offer of securities is made in or accompanied by a prospectus or profile statement in which a person is named as the underwriter (but not a sub-underwriter) to the offer, the prospectus or profile statement shall not be issued unless —

- (a) the person has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to being named in the prospectus or profile statement as underwriter to that offer; and
- (b) there appears in the prospectus or profile statement, as the case may be, a statement that the person has given and has not withdrawn such consent.

[1/2005]

(3) If any prospectus or profile statement is issued in contravention of subsection (1) or (2), the person making the offer and every person who is knowingly a party to the issue thereof 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.

[1/2005]

(4) Every person making the offer shall cause a true copy of every written consent referred to in subsections (1) and (2) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

[1/2005]

(5) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (4) for a period of at least 6 months after the registration of the prospectus or profile statement.

[1/2005]

Duration of validity of prospectus and profile statement

250.—(1) No person shall make an offer of securities, or allot, issue or sell any securities, on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[1/2005]

(2) In a case where an entity makes an offer of securities or where the securities being offered are those issued by an entity or a proposed entity, no officer or equivalent person or promoter of the entity or proposed entity shall authorise or permit —

(a) the offer of those securities; or

(b) the allotment, issue or sale of those securities,

on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[1/2005]

(3) The period under subsection (1) or (2) is —

(a) in a case where the securities are debentures or units of debentures issued under a debenture issuance programme under section 240A, 24 months from the date of registration by the Authority of the base prospectus in relation to such offer, allotment, issue or sale; or

(b) in any other case, 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

[1/2005]

(4) If default is made in complying with subsection (1) or (2), the person and, in the case of an entity or a proposed entity, every officer or equivalent person or promoter of the entity or proposed entity 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.

[1/2005]

(5) An allotment, an issue or a sale of securities that is made in contravention of subsection (1) or (2) shall not, by reason only of that fact, be voidable or void.

[1/2005]

[Companies, s. 57 (8)–(10)]

Restrictions on advertisements, etc.

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

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

unless the advertisement or publication is authorised by this section.

[1/2005]

(2) In determining whether a statement —

- (a) indirectly refers to an offer or intended offer of securities; or
- (b) is reasonably likely to induce persons to subscribe for or purchase securities,

regard shall be had to whether the statement —

- (i) forms part of the normal advertising of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services;
- (ii) communicates information that materially deals with the affairs of the entity; and

- (iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

[1/2005]

(3) Notwithstanding subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 275 (2) or persons to whom an offer referred to in section 275 (1A) is to be made without contravening subsection (1), if —

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

- (i) the following statement:

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

- (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and
 - (iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the preliminary document to purchase or subscribe for any securities to which the preliminary document relates;
 - (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the securities to which the preliminary document relates, or the acceptance of such an offer by any person; and
 - (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

[1/2005]

(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting oral or written material, on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 275 (2) or persons to whom an offer referred to

in section 275 (1A) is to be made before a prospectus or profile statement is registered by the Authority.

[1/2005]

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

[1/2005]

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

- (a) a statement that identifies the securities, the person making the offer, the issuer and, where applicable, the underlying entity;
- (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
- (c) a statement that anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus or profile statement; and
- (d) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.

[1/2005]

(7) To satisfy subsection (6), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the statement referred to in paragraph (d).

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

- (a) it includes a statement that the prospectus or profile statement in respect of the offer of securities is available for collection at the times and places specified in the statement;
- (b) it includes a statement that anyone wishing to acquire the securities will need to make an application in the manner set out in the prospectus or profile statement; and
- (c) it does not contain any information that is not included in the prospectus or profile statement.

[1/2005]

(9) An advertisement or a publication does not contravene subsection (1) if it —

- (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or recognised securities exchange made by any person;
- (b) consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;
- (c) consists solely of a report about the issuer or the underlying entity that is published by the person making the offer, the issuer or the underlying entity, which —
 - (i) does not contain information that materially affects the affairs of the issuer or underlying entity other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a disclosure, notice or report referred to in paragraph (a) or (b); and
 - (ii) does not refer (directly or indirectly) to the offer or intended offer;
- (d) consists solely of a statement made by the person making the offer, the issuer or the underlying entity that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;
- (e) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (f) (i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio, television or any other means of broadcasting or communication, relating to —
 - (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;
 - (ii) a disclosure, notice or report referred to in paragraph (a);
 - (iii) a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (b);
 - (iv) a report referred to in paragraph (c);

- (f) is a report about the securities which are the subject of the offer or intended offer, published by someone who is not —
 - (i) the person making the offer, the issuer or the underlying entity;
 - (ii) a director or an equivalent person of the person making the offer, the issuer or the underlying entity;
 - (iii) a person who has an interest in the success of the issue or sale of the securities; or
 - (iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);
- (g) is a report about the securities which are the subject of the offer or intended offer, published and delivered to any institutional investor not later than 14 days prior to the date of lodgment of the prospectus, provided that —
 - (i) the offer is also made or will also be made in one or more other countries;
 - (ii) the publication and delivery of such report in that other country or any one of those other countries do not infringe any law, code or other requirement of that country;
 - (iii) the report and the manner of its publication and delivery in Singapore comply with such other requirements as may be prescribed by the Authority; and
 - (iv) the person issuing the report complies with such requirements as may be prescribed by the Authority; or
- (h) is a publication made by the person making the offer, the issuer or the underlying entity solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —
 - (i) an earlier news report or a genuine comment referred to in paragraph (e); or
 - (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or

any other means of broadcasting or communication, referred to in subsection (10),

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

[1/2005]

(10) A person does not contravene subsection (1) if —

(a) he publishes any advertisement or publication in the ordinary course of a business of —

(i) publishing a newspaper, periodical or magazine; or

(ii) broadcasting by radio, television, or any other means of broadcasting or communication; and

(b) he did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

(11) Subsection (9) (e) and (f) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

[1/2005]

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

[1/2005]

(13) This section does not affect any liability that a person has under any other law.

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

(15) Any person who contravenes any of the conditions or restrictions imposed under subsection (14) 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.

(16) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

[1/2005]

(17) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(18) For the purposes of subsection (2) (ii), the reference to affairs of the entity shall —

(a) in the case where the entity is a corporation, be construed as including a reference to the matters referred to in section 2 (2); and

(b) in any other case, be construed as a reference to such matters as may be prescribed by the Authority.

[1/2005]

(19) For the purposes of subsection (9) (c) (i), the reference to affairs of the issuer or underlying entity shall —

(a) in the case where the issuer or underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2 (2); and

(b) in any other case, be construed as a reference to such matters as may be prescribed by the Authority.

[1/2005]

[Companies, s. 48; Aust. Corporations 2001, s. 734]

Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies

252.—(1) A person referred to in section 254 (3) (other than paragraph (a)) shall notify in writing the person making the offer of securities, as soon as practicable, if he becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer that —

(a) a statement in the prospectus or the profile statement is false or misleading;

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

1.4.2006

(c) a new circumstance —

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

and the failure to so notify would have been materially adverse from the point of view of an investor.

[16/2003; 1/2005]

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

(3) For the purposes of subsection (1) (a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Companies, s. 55A; Aust. Corporations 2001, s. 730]

Criminal liability for false or misleading statements

253.—(1) Where an offer of securities is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

(a) a false or misleading statement is contained in —

- (i) the prospectus or the profile statement; or
- (ii) any application form for the securities;

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

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

- (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
- (ii) would have been required to be included in the prospectus under section 243, or required to be

included in the profile statement under section 246, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority, the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[16/2003; 1/2005]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.

(3) A person shall not be taken to have contravened subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.

(4) The persons guilty of the offence are —

(a) the person making the offer;

(b) where the person making the offer is an entity —

(i) each director or equivalent person of the entity; and

(ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;

(c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of his related parties —

(i) the issuer;

(ii) each director or equivalent person of the issuer; and

(iii) each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the issuer;

- (d) an issue manager to the offer of the securities who is, and who has consented to be, named in the prospectus or profile statement, if —
 - (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
 - (ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or
 - (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;
- (e) an underwriter (but not a sub-underwriter) to the issue or sale of the securities who is, and who has consented to be, named in the prospectus or profile statement, if —
 - (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
 - (ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or
 - (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;
- (f) a person named in the prospectus or the profile statement with his consent as having made —
 - (i) the statement that is false or misleading, if he intentionally or recklessly makes that statement; or
 - (ii) a statement on which the false or misleading statement is based, if he knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw his consent,but only in respect of the inclusion of the false or misleading statement; and
- (g) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information

or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.

[1/2005]

(5) For the purposes of subsection (4) and this subsection —

(a) remedial action includes any of the following:

- (i) preventing the statement from being included, or having the information or circumstance included, in the prospectus or profile statement, as the case may be;
- (ii) procuring the lodgment of a supplementary or replacement prospectus under section 241; and

(b) a person is reckless as to the matter referred to in subsection (4) (d) (iii) or (e) (iii) if, having been put upon inquiry that the statement to be, or which has been, included in the prospectus or profile statement is likely to be false or misleading, that the information or circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, he fails to —

- (i) make all inquiries as are reasonable in the circumstances to verify this; and
- (ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted by the outcome of the inquiries.

[1/2005]

(6) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Companies, s. 56; Aust. Corporations 2001, s. 728]

Civil liability for false or misleading statements

254.—(1) Where an offer of securities is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

(a) a false or misleading statement is contained in —

- (i) the prospectus or the profile statement; or
- (ii) any application form for the securities;

- (b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or
- (c) there is an omission to state a new circumstance that —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required by section 243 to be included in the prospectus, or required to be included in the profile statement under section 246, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

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

[16/2003; 1/2005]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

- (3) The persons liable are —
- (a) the person making the offer;
 - (b) where the person making the offer is an entity —
 - (i) each director or equivalent person of the entity; and
 - (ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;
 - (c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of his related parties —
 - (i) the issuer;

- (ii) each director or equivalent person of the issuer; and
- (iii) each person who is, and who has consented to be, named in the prospectus or the profile statement as a proposed director or an equivalent person of the issuer;
- (d) an issue manager to the offer of the securities who is, and who has consented to be, named in the prospectus or the profile statement;
- (da) an underwriter (but not a sub-underwriter) to the issue or sale of the securities who is, and who has consented to be, named in the prospectus or the profile statement;
- (e) a person named in the prospectus or the profile statement with his consent as having made a statement —
 - (i) that is included in the prospectus or the profile statement; or
 - (ii) on which a statement made in the prospectus or the profile statement is based,but only in respect of the inclusion of that statement; and
- (f) any other person who made the false or misleading statement or omitted to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance.

[1/2005]

(4) A person who acquires securities as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the securities in reliance on both the profile statement and the prospectus for the offer.

[1/2005]

(4A) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(5) No action under subsection (1) shall be commenced after the expiration of 6 years from the date on which the cause of action arose.

(6) This section does not affect any liability that a person has under any other law.

[Companies, s. 55; Aust. Corporations 2001, s. 728]

Defences

255.—(1) A person referred to in section 253 (4) (a), (b) or (c) is not liable under section 253 (1), and a person referred to in section 254 (3) is not liable under section 254 (1), only because of a false or misleading statement in a prospectus or a profile statement if the person 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 was not false or misleading.

[1/2005]

(2) A person referred to in section 253 (4) (a), (b) or (c) is not liable under section 253 (1), and a person referred to in section 254 (3) is not liable under section 254 (1), only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person 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 there was no omission from the prospectus or profile statement in relation to that matter.

[1/2005]

(3) A person is not liable under section 253 (1) or 254 (1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that he placed reasonable reliance on information given to him by —

- (a) if the person is an entity, someone other than —
 - (i) a director or an equivalent person; or
 - (ii) an employee or agent, of the entity; or
- (b) if the person is an individual, someone other than an employee or agent of the individual.

[1/2005]

(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because he performs a particular professional or advisory function for the entity or individual.

[1/2005]

(5) A person who is named in a prospectus or a profile statement as —

- (a) a proposed director or an equivalent person of the issuer, or an issue manager or underwriter;
- (b) having made a statement included in the prospectus or the profile statement; or
- (c) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 253 (1) or 254 (1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that he publicly withdrew his consent to being named in the prospectus or the profile statement in that way.

[1/2005]

(6) A person is not liable under section 253 (1) or 254 (1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that he was not aware of the matter.

(7) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Companies, s. 55B; Aust. Corporations 2001, s. 731, s. 732 and s. 733]

256. (Repealed by Act 1/2005)

Document containing offer of securities for sale deemed prospectus

257.—(1) Subsection (2) applies where —

- (a) an entity allots or agrees to allot to any person any securities of the entity with a view to all or any of them being subsequently offered for sale to another person; and
- (b) such offer (referred to in this section as a subsequent offer) does not qualify for an exemption under Subdivision (4) of this Division (other than section 280).

[1/2005]

(2) Any document by which the subsequent offer is made shall for all purposes be deemed to be a prospectus issued by the entity, and the entity shall for all purposes be deemed to be the person making the offer, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if —

- (a) an offer of securities has been made; and

- (b) persons accepting the subsequent offer in respect of any securities were subscribers therefor,

but without prejudice to the liability, if any, of the persons making the subsequent offer, in respect of statements or non-disclosures in the document or otherwise.

[16/2003; 1/2005]

(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being subsequently offered for sale if it is shown —

- (a) that an offer of the securities or of any of them for sale was made within 6 months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the entity in respect of the securities had not been so received.

[1/2005]

(4) The requirements of this Division as to prospectuses shall have effect as though the persons making the subsequent offer were persons named in the prospectus as directors or equivalent persons of the entity.

[1/2005]

(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer shall state —

- (a) the net amount of the consideration received or to be received by the entity in respect of the securities being offered; and
- (b) the place and time at which a copy of the contract under which the securities have been or are to be allotted may be inspected.

[1/2005]

[Companies, s. 52]

Application and moneys to be held in trust in separate bank account until allotment

258.—(1) All application and other moneys paid prior to allotment by any applicant on account of securities offered to him shall, until the allotment of the securities, be held by the person making the offer of the securities upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those securities.

[1/2005]

(2) There shall be no obligation or duty on any bank with which any such moneys have been deposited to enquire into or see to the proper application of those moneys, so long as the bank acts in good faith.

[1/2005]

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

[1/2005]

[Companies, s. 58]

Allotment of securities where prospectus indicates application to list on securities exchange

259.—(1) Where a prospectus states or implies that application has been or will be made for permission for the securities offered thereby to be listed for quotation on any securities exchange, and —

- (a) the permission is not applied for in the form required by the securities exchange within 3 days from the date of the issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the securities exchange,

then —

- (i) any allotment whenever made of securities made on an application in pursuance of the prospectus shall, subject to subsection (3), be void; and
- (ii) any person who continues to allot such securities after the period specified in paragraph (a) or (b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer shall, subject to subsection (3), immediately repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such moneys is not repaid within 14 days after the person making the offer so becomes liable to repay them, then —

- (a) he shall be liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days; and
- (b) where the person making the offer is an entity, in addition to the liability of the entity, the directors or equivalent persons of the entity shall be jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.

[1/2005]

(3) Where in relation to any securities of an entity —

- (a) permission is not applied for as specified in subsection (1) (a); or

(b) permission is not granted as specified in subsection (1) (b), the Authority may, on the application of the entity made before any of the securities is purported to be allotted, exempt the allotment of the securities from the provisions of this section, and the Authority shall give notice of such exemption in the *Gazette*.

[1/2005]

(4) A director or an equivalent person shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

[1/2005]

(5) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section or purporting to do so shall be void.

[1/2005]

(6) Without limiting the application of any of its provisions, this section shall have effect —

- (a) in relation to any securities agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and
- (b) in relation to a prospectus offering securities for sale as if a reference to sale were substituted for a reference to allotment.

[1/2005]

(7) All moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).

[16/2003; 1/2005]

(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(9) Where the securities exchange has within the time specified in subsection (1) (b) granted permission subject to compliance with any requirements specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if the directors or equivalent persons have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

[1/2005]

(10) If any such undertaking referred to in subsection (9) is not complied with, each director or equivalent person who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(11) A person shall not issue a prospectus inviting persons to subscribe for securities of an entity if it includes —

- (a) a false or misleading statement that permission has been granted for those securities to be listed for quotation on, dealt in or quoted on any securities exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation, dealing in or quoting the securities, on any securities exchange, or to any requirement of a securities exchange, unless —
 - (i) that statement is or is to the effect that permission has been granted, or that application has been or will be made to the securities exchange within 3 days from the date of the issue of the prospectus; or

- (ii) that statement has been approved by the Authority for inclusion in the prospectus.

[1/2005]

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

(13) Where a prospectus contains a statement to the effect that the memorandum and articles or other constituent document or documents of the issuer comply, or have been drawn so as to comply, with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the securities to which the prospectus relates to be listed for quotation on the securities exchange.

[1/2005]

[Companies, s. 53]

Prohibition of allotment unless minimum subscription received

260.—(1) No allotment shall be made of any securities of a company unless —

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the securities so subscribed has been received by the company,

but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

[1/2005]

(2) The minimum subscription shall —

- (a) be calculated based on the price at which each share or debenture, or each unit of share or debenture, is or will be offered; and
- (b) be reckoned exclusively of any amount payable otherwise than in cash.

[1/2005]

(3) The amount payable on application on each share or debenture, or each unit of share or debenture, offered shall not be less than 5% of

the price at which the share or debenture, or unit of share or debenture, is or will be offered.

[1/2005]

(4) If the conditions referred to in subsection (1) (a) and (b) have not been satisfied on the expiration of 4 months after the first issue of the prospectus, all moneys received from applicants for securities shall be immediately repaid to them without interest.

[1/2005]

(5) If any money referred to in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months; but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) An allotment made by a company to an applicant in contravention of this section shall be voidable at the option of the applicant which option may be exercised by written notice served on the company —

(a) within one month after the holding of the statutory meeting of the company and not later; or

(b) in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later,

and the allotment shall be so voidable notwithstanding that the company is in the course of being wound up.

(7) Every director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable in addition to the penalty or punishment for the offence to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred thereby.

(8) No proceedings for the recovery of any compensation under subsection (7) shall be commenced after the expiration of 2 years from the date of the allotment.

(9) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section shall be void.

[1/2005]

[Companies, s. 57]

*Subdivision (3) — Debentures***Preliminary provisions**

261.—(1) Subject to subsection (1A), this Subdivision shall apply where an entity makes an offer of debentures.

[1/2005]

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

[1/2005]

(1B) In subsections (1A) and (1C), “prescribed entity” means —

- (a) any bank licensed under the Banking Act (Cap. 19); or
- (b) any entity or entity of a class which has been declared by the Authority, by order published in the *Gazette*, to be a prescribed entity for the purposes of this section.

[1/2005]

(1C) The Authority may, by notice in writing —

- (a) impose such conditions or restrictions on a prescribed entity as it thinks fit; and
- (b) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity shall comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

[1/2005]

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

[1/2005]

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

(3) In this Subdivision, a corporation is related to another corporation if it is deemed to be related to that other corporation by virtue of section 6 of the Companies Act (Cap. 50).

Offer of asset-backed securities

262.—(1) An offer of asset-backed securities shall be made only if they are issued by —

- (a) a special purpose vehicle other than a trust; or

(b) the trustee of a trust that is a special purpose vehicle. [1/2005]

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

[1/2005]

(3) In this section —

“asset-backed securities” means debentures or units of debentures issued pursuant to a securitisation transaction;

“securitisation transaction” means an arrangement that involves the sale, transfer or assignment of assets to a special purpose vehicle where —

(a) such sale, transfer or assignment is funded by the issue of debentures or units of debentures (whether by that special purpose vehicle or another special purpose vehicle); and

(b) payments in respect of such debentures or units of debentures are or will be principally derived, directly or indirectly, from the cash flows generated by the assets;

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

(a) hold (whether as a legal or equitable owner) the assets from which payments to holders of any asset-backed securities are or will be primarily derived;

(b) issue any asset-backed securities.

[1/2005]

263. (*Repealed by Act 16/2003*)

264. (*Repealed by Act 16/2003*)

Power of court in relation to certain irredeemable debentures

265.—(1) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the court so orders, be enforceable, immediately or at such other time as the court directs if, on the application of the trustee for the holders of the debentures

or (where there is no trustee) on the application of any holder of the debentures, the court is satisfied that —

- (a) at the time of the issue of the debentures the assets of the borrowing entity which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu* if any); and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing entity is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment.

[1/2005]

(2) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing entity and creditors.

[1/2005]

[Companies, s. 100]

Duties of trustees

266.—(1) (*Deleted by Act 16/2003*)

(2) Where, after due inquiry, the trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Authority for an order under this subsection.

[1/2005]

(3) The Authority, on such application —

- (a) after giving the borrowing entity an opportunity of making representations in relation to that application, by order in

writing served on the entity at its registered office in Singapore, may impose such restrictions on the activities of the borrowing entity, including restrictions on advertising for deposits or loans and on borrowing by the entity as the Authority thinks necessary for the protection of the interests of the holders of the debentures; or

- (b) may, and if the borrowing entity so requires, shall direct the trustee to apply to the court for an order under subsection (5); and the trustee shall apply accordingly.

[1/2005]

(4) Where —

- (a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
- (b) the borrowing entity has contravened an order made by the Authority under subsection (2),

the trustee may, and where the borrowing entity has requested the trustee to do so, shall apply to the court for an order under subsection (5).

[1/2005]

(5) Where an application is made to the court under subsection (3) or (4), the court may, after giving the borrowing entity an opportunity to be heard, by order, do all or any of the following things:

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the court thinks fit;
- (b) stay all or any actions or proceedings before any court by or against the borrowing entity;
- (c) restrain the payment of any moneys by the borrowing entity to the holders of debentures of the borrowing entity or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security, if any, for the debentures;

- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing entity or any of its guarantor entities or the public,

but in making any such order the court shall have regard to the rights of all creditors of the borrowing entity.

[1/2005]

(6) The court may vary or rescind any order made under subsection (5) as the court thinks fit.

(7) A trustee in making any application to the Authority or to the court shall have regard to the nature and kind of the security given when the offer of the debentures was made, and if no security was given shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing entity.

[1/2005]

(8) A trustee may rely upon any certificate or report given or statement made by any advocate and solicitor, auditor or officer of the borrowing entity or guarantor entity if it has reasonable grounds for believing that such advocate and solicitor, auditor or officer was competent to give or make the certificate, report or statement.

[1/2005]

[Companies, s. 101]

Powers of trustee to apply to court for directions, etc.

267.—(1) A trustee for the holders of debentures may apply to the court —

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or
- (b) to determine any question in relation to the interests of the holders of debentures.

(2) The court may —

- (a) give such directions to the trustee as the court thinks fit; and
- (b) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the court thinks fit or make such other order on the application as the court thinks just.

(3) The court may, on an application under this section, order a meeting of all or any of the holders of debentures to be called to consider any matters in which they are concerned and to advise the

trustee on those matters and may give such ancillary or consequential directions as the court thinks fit.

(4) The meeting shall be held and conducted in such manner as the court directs, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints.

[Companies, s. 102]

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

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

[16/2003]

Obligations of borrowing entity

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

- (a) at the end of a period not exceeding 3 months ending on a day (being a day after the date of the issue of the relevant prospectus) which the trustee is hereby required to notify the borrowing entity in writing; and
- (b) at the end of each succeeding period thereafter, being a period of 3 months or such shorter time as the trustee may, in any special circumstances allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and within one month after the end of each such period lodge a copy of the report relating to that period with the Authority and with the trustee.

[1/2005]

(2) The report referred to in subsection (1) shall be signed by not less than 2 of the directors or equivalent persons on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of subsection (1), shall state —

- (a) whether or not the limitations on the amount that the entity may borrow have been exceeded;
- (b) whether or not the borrowing entity and each of its guarantor entities have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing entity, its subsidiaries or its guarantor entities or any of them have occurred which materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of those circumstances;
- (e) whether or not there has been any substantial change in the nature of the business of the borrowing entity or any of its subsidiaries or any of its guarantor entities since the debentures were first issued which has not previously been reported upon as required by this section and, if so, particulars of that change; and
- (f) where the borrowing entity has deposited money with or lent money to or assumed any liability of a corporation which is related to the borrowing entity, particulars of —
 - (i) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report; and
 - (ii) the total amounts owing to the borrowing entity in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liabilities which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing entity and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing entity.

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

(4) Where there is a trustee for the holders of any debentures issued by a borrowing entity, the borrowing entity and each of its guarantor entities which has guaranteed the repayment of the moneys raised by the issue of those debentures shall, whether or not any demand therefor has been made —

- (a) in writing furnish the trustee, within 21 days after the creation of the charge, with the particulars of any charge created by the entity or the guarantor entity, as the case requires; and
- (b) when the amount to be advanced on the security of the charge is indeterminate, in writing furnish the trustee, within 7 days after the advance, with particulars of the amount or amounts in fact advanced.

[1/2005]

(5) Where any such advance referred to in subsection (4) (b) is merged in a current account with bankers or trade creditors, it shall be sufficient for particulars of the net amount outstanding in respect of any such advance to be furnished every 3 months.

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

- (a) a profit and loss account for the first 6 months of every financial year of the entity and a balance-sheet as at the end of that period, not later than 3 months after the expiration of the period of 6 months; and
- (b) a profit and loss account for every financial year of the entity and a balance-sheet as at the end of that period, not later than 5 months after the expiration of that financial year.

[1/2005]

(7) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(8) Section 201 (4) to (7) and (11) to (16) and section 207 (1), (2) and (7) of the Companies Act (Cap. 50), shall, with such adaptations as are necessary, be applicable to every profit and loss account and balance-sheet made out and lodged under subsection (6) as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections.

(9) Where —

- (a) the directors or equivalent persons of a borrowing entity do not lodge with the trustee for the holders of debentures a report as required by subsection (1); or
- (b) the directors or equivalent persons of a borrowing entity or the directors of a guarantor entity do not lodge with the trustee the balance-sheets and profit and loss accounts as required by subsection (6) within the time prescribed,

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

[1/2005]

(10) Notwithstanding anything in subsection (8), a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6) —

- (a) need not be audited; or
- (b) the audit thereof may be of a limited nature or extent,

if the trustee for the holders of the debentures of the borrowing entity has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

[1/2005]

(11) Where the trustee has by notice in writing given his consent under subsection (10), the directors or equivalent persons of the borrowing entity, or the directors or equivalent persons of the guarantor entity, in respect of whose profit and loss account and balance-sheet the notice was given, shall lodge with the Authority a copy of the notice at the time when the profit and loss account and balance-sheet to which the notice relates are lodged with the Authority.

[1/2005]

(12) Notwithstanding anything in this section, a profit and loss account and balance-sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6) may, unless the trustee for the holders of the debentures of the borrowing entity otherwise requires in writing, be based upon the value

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

[1/2005]

(13) The estimation of the directors or equivalent persons referred to in subsection (12) shall be made on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance-sheet of that entity laid before the entity at its last preceding annual general meeting and certified in writing by the directors or equivalent persons as such.

[1/2005]

[Companies, s. 103]

Obligation of guarantor entity to furnish information

269.—(1) For the purpose of the preparation of a report that, by this Subdivision, is required to be signed by or on behalf of the directors or equivalent persons, or persons approved by the Authority, of a borrowing entity or any of them, that borrowing entity may, by notice in writing, require any of its guarantor entities to furnish it with any information relating to that guarantor entity which is, by this Subdivision, required to be contained in that report.

[1/2005]

(2) The guarantor entity shall furnish the borrowing entity with the information required under subsection (1) before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice.

[1/2005]

(3) A guarantor entity which fails to comply with a requirement contained in a notice given under subsection (1) and every officer or equivalent person of that entity who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

[Companies, s. 104]

Loans and deposits to be immediately repayable on certain events

270.—(1) Where there is, in any prospectus issued in connection with an offer of debentures, a statement as to any particular purpose or project for which the moneys received by the borrowing entity in response to the offer are to be applied, the borrowing entity shall, where there is a trustee for the holders of those debentures, from time

to time make reports to the trustee as to the progress that has been made towards achieving such purpose or completing such project.

[16/2003; 1/2005]

(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under section 268 (1).

(3) When it appears to the trustee for the holders of the debentures that such purpose or project has not been achieved or completed —

(a) within the time stated in the prospectus within which the purpose or project is to be achieved or completed; or

(b) where no such time was stated, within a reasonable time, the trustee may and, if in his opinion it is necessary for the protection of the interests of the holders of the debentures, shall give notice in writing to the borrowing entity requiring it to repay the moneys so received by the borrowing entity and, within one month after such notice is given, lodge with the Authority a copy thereof.

[1/2005]

(4) The trustee shall not give notice under subsection (3) if he is satisfied —

(a) that the purpose or project has been substantially achieved or completed;

(b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(c) that the failure to achieve the purpose or project was due to circumstances beyond the control of the borrowing entity that could not reasonably have been foreseen by the borrowing entity at the time that the prospectus was issued.

[1/2005]

(5) Upon receipt by the borrowing entity of a notice referred to in subsection (3), the borrowing entity shall be liable to repay, and on demand in writing by a person entitled thereto shall immediately repay to him any moneys owing to him as the result of a loan or deposit made in response to the offer unless —

(a) before the moneys were accepted by the borrowing entity, the borrowing entity had given notice in writing to the persons from whom the moneys were received specifying the purpose

or project for which the moneys would in fact be used and the moneys were accepted by the borrowing entity accordingly; or

- (b) the borrowing entity by notice in writing served on the holders of the debentures —
 - (i) had specified the purpose or project for which the moneys would in fact be applied by the borrowing entity; and
 - (ii) had offered to repay the moneys to the holders of the debentures, and that person had not within 14 days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the borrowing entity repayment of the money.

[1/2005]

(6) Where the borrowing entity has given a notice in writing as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the borrowing entity, this section shall apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

[1/2005]

[Companies, s. 105]

Liability of trustees for debenture holders

271.—(1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee.

(2) Subsection (1) shall not invalidate —

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given —
 - (i) on the agreement thereto of a majority of not less than three fourths in nominal value of the debenture holders present and voting in person or, where proxies

are permitted, by proxy at a meeting summoned for the purpose; and

- (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on his ceasing to act.

(3) Subsection (1) shall not operate —

- (a) to invalidate any provision in force on 29th December 1967 so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or
- (b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

[Companies, s. 106]

Subdivision (4) — Exemptions

Issue or transfer of securities for no consideration

272.—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of shares or debentures of an entity if no consideration is or will be given for the issue or transfer of the shares or debentures.

[1/2005]

(2) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of units of shares or debentures of an entity if —

- (a) no consideration is or will be given for the issue or transfer of the units of shares or debentures; and
- (b) no consideration is or will be given for the underlying shares or debentures on the exercise or conversion of the units of shares or debentures.

[1/2005]

Small offers

272A.—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to personal offers of securities of an entity by a person if —

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed —
 - (i) \$5 million (or its equivalent in a foreign currency); or

- (ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);
- (b) in respect of each offer, the person making the offer gives the person to whom he makes the offer —
 - (i) the following statement in writing:

“This offer is made in reliance on the exemption under section 272A (1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”; and
 - (ii) a notification in writing that the securities to which the offer (referred to in this sub-paragraph as the initial offer) relates shall not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —
 - (A) in compliance with Subdivisions (2) and (3) of this Division;
 - (B) in reliance on subsection (8)(c) or any other exemption under any provision of this Subdivision (other than this subsection); or
 - (C) where at least 6 months have elapsed from the date the securities were acquired under the initial offer, in reliance on the exemption under this subsection;
- (c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
 - (i) the holder of a capital markets services licence to deal in securities;
 - (ii) an exempt person in respect of dealing in securities; or
 - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of

dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(2) For the purposes of subsection (1) (b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

[1/2005]

(3) For the purposes of subsection (1), a personal offer of securities is one that —

- (a) may be accepted only by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in that offer, having regard to —

- (i) any previous contact before the date of the offer between the person making the offer and that person;
- (ii) any previous professional or other connection established before that date between the person making the offer and that person; or
- (iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —

- (A) the person making the offer;
- (B) the holder of a capital markets services licence to deal in securities;
- (C) an exempt person in respect of dealing in securities;
- (D) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;
- (E) an exempt financial adviser as defined in section 2 (1) of the Financial Advisers Act; or
- (F) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or the

provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind.

[1/2005]

(4) In determining the amount raised by an offer, the following shall be included:

- (a) the amount payable for the securities at the time they are allotted, issued or sold;
- (b) if the securities are issued partly-paid, any amount payable at a future time if a call is made;
- (c) if the securities carry a right (by whatever name called) to be converted into other securities or to acquire other securities, any amount payable on the exercise of the right to convert them into, or to acquire, other securities.

[1/2005]

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1) (a), each amount raised —

- (a) by that person from any offer of securities issued by the same entity; or
- (b) by that person or another person from any offer of securities of an entity, units or derivatives of units in a business trust, or units in a collective investment scheme, which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), section 282V (1) or 302B (1) shall be included.

[1/2005]

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(7) For the purpose of this section, an offer of securities made by a person acting as an agent of another person shall be treated as an offer made by that other person.

[1/2005]

(8) Where securities acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the securities to another person, Subdivisions (2) and (3) of this

Division shall apply to the offer from the first-mentioned person to the second-mentioned person which resulted in that sale, unless —

- (a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);
- (b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the securities were acquired under the initial offer; or
- (c) such offer is one —
 - (i) that may be accepted only by the person to whom it is made;
 - (ii) that is made to a person who is likely to be interested in the offer having regard to —
 - (A) any previous contact before the date of the offer between the person making the initial offer and that person;
 - (B) any previous professional or other connection established before that date between the person making the initial offer and that person; or
 - (C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —
 - (CA) the person making the initial offer;
 - (CB) the holder of a capital markets services licence to deal in securities;
 - (CC) an exempt person in respect of dealing in securities;
 - (CD) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;
 - (CE) an exempt financial adviser as defined in section 2 (1) of the Financial Advisers Act; or
 - (CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other

requirements of any foreign jurisdiction in respect of dealing in securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind;

(iii) in respect of which the first-mentioned person has given the second-mentioned person —

(A) the following statement in writing:

“This offer is made in reliance on the exemption under section 272A (8) (c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”; and

(B) a notification in writing that the securities being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the securities were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional

services, or by way of commission or fee for services rendered by —

- (A) the holder of a capital markets services licence to deal in securities;
- (B) an exempt person in respect of dealing in securities; or
- (C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8) (c) (iii).

[1/2005]

(10) In subsections (1) (c) and (8) (c) (iv), “advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message, that is published in connection with an offer of securities, but does not include —
 - (i) a document —
 - (A) purporting to describe the securities being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity; and
 - (B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the securities being offered;
 - (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or recognised securities exchange, which is made by any person; or

- (iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting.

[1/2005]

(11) In subsection (10) (i) (A), the reference to the affairs of the person making the offer, the issuer or, where applicable, the underlying entity shall —

- (a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2 (2); and
- (b) in any other case, be construed as referring to such matters as may be prescribed by the Authority.

[1/2005]

Private placement

272B.—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to offers of securities of an entity that are made by a person if —

- (a) the offers are made to no more than 50 persons within any period of 12 months;
- (b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
 - (i) the holder of a capital markets services licence to deal in securities;
 - (ii) an exempt person in respect of dealing in securities; or
 - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1) (a).

[1/2005]

(3) In determining whether offers of securities by a person are made to no more than the applicable number of persons specified in subsection (1) (a) within a period of 12 months, each person to whom —

- (a) an offer of securities issued by the same entity is made by the first-mentioned person; or
- (b) an offer of securities of an entity, units or derivatives of units in a business trust, or units in a collective investment scheme, is made by the first-mentioned person or another person where such offer is a closely related offer,

if any, within that period in reliance on the exemption under this section, section 282W or 302C shall be included.

[1/2005]

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(5) For the purposes of subsection (1) —

- (a) an offer of securities to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the securities which are the subject of the offer;
- (b) an offer of securities to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the securities which are the subject of the offer;
- (c) an offer of securities to 2 or more persons who will own the securities acquired as joint owners shall be treated as an offer to a single person;
- (d) an offer of securities to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;
- (e) offers of securities made by a person as an agent of another person shall be treated as offers made by that other person;
- (f) where an offer is made to a person with a view to another person acquiring an interest in those securities by virtue of

section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons specified in subsection (1) (a); and

(g) where —

(i) an offer of securities is made to a person in reliance on the exemption under subsection (1) with a view to those securities being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 280,

both persons shall be counted for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons specified in subsection (1) (a).

[1/2005]

(6) In subsection (1) (b), “advertisement” has the same meaning as in section 272A (10).

[1/2005]

Offer made under certain circumstances

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

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

(b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law)

relating to take-overs of the country in which the corporation was incorporated;

(c) it is made in connection with a proposed compromise or arrangement between —

(i) an unlisted corporation and its creditors or a class of them; or

(ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country in which the corporation was incorporated;

(ca) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some or all of the shares of a particular class in a corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code is applicable to it;

(cb) it is made in connection with a proposed compromise or arrangement between —

(i) a corporation and its creditors or a class of them; or

(ii) a corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code is applicable to it;

(cc) it is an offer to enter into an underwriting agreement relating to securities;

(cd) it is an offer of securities of an entity —

(i) being an entity which is formed or constituted in Singapore or otherwise, whose securities are not listed for quotation on a securities exchange; or

- (ii) being an entity which is not formed or constituted in Singapore, whose securities are listed for quotation on a securities exchange and such listing is not a primary listing,
that is made to existing members or debenture holders of that entity (whether or not it is renounceable in favour of persons other than existing members or debenture holders);
- (ce) it is an offer of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on a securities exchange;
- (cf) it is an offer of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed for quotation on a securities exchange;
- (cg) it is an offer of units of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on a securities exchange, where such units may only be exercised or converted by any existing member or debenture holder into shares or debentures, as the case may be, of the entity;
- (ch) it is an offer of units of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed on a securities exchange, where such units may only be exercised or converted by any existing debenture holder into debentures of the entity;
- (ci) it is an offer of securities of a corporation made in the circumstances specified under section 306 of the Companies Act (Cap. 50);
- (d) it is an offer of shares or debentures that have been previously issued and are listed for quotation or quoted on a securities exchange;
- (e) it is an offer of units of shares or debentures where —
 - (i) the units of shares or debentures have been previously issued and are listed for quotation or quoted on a securities exchange; or
 - (ii) an application has been or will be made for permission for the units of shares or debentures to be listed for quotation or quoted on a securities exchange and the shares or debentures have been previously issued and

are listed for quotation on a securities exchange or a recognised securities exchange; or

- (f) it is made (whether or not in relation to securities that have been previously issued) by an entity to a qualifying person, where the securities are to be held by or for the benefit of the qualifying person and are the securities of the entity or any of its related parties.

[16/2003; 1/2005]

(1A) An offer of securities does not come within subsection (1) (d) or (e) if —

- (a) the securities being offered are borrowed by the issuer from an existing shareholder, holder of a debenture, or holder of units of shares or debentures, solely for the purpose of facilitating the offer of securities by the issuer; and
- (b) such borrowing is made under an agreement or arrangement between the issuer and the shareholder or holder which promises the issue or allotment of securities by the issuer to the shareholder or holder at the same time or shortly after the offer.

[1/2005]

(2) An offer of securities comes within subsection (1) (f) only if no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

- (a) the holder of a capital markets services licence to deal in securities;
- (b) an exempt person in respect of dealing in securities; or
- (c) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

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

(4) For the purposes of subsection (1) (f), a person is a qualifying person in relation to an entity if he is a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the entity or a related corporation of that entity (being a corporation), or if he is the spouse, widow, widower or a child, adopted child or step-child below the

age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

[1/2005]

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

(a) the cost of providing a prospectus for an offer of securities outweighs the resulting protection to investors; or

(b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer of securities,

then Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to such an offer for a period of 6 months from the date of the declaration.

[1/2005]

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

[16/2003; 1/2005]

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

[16/2003]

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

[16/2003]

(9) In subsection (1) (b) and (c), “unlisted corporation” means a corporation —

(a) that is not a company; and

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

[1/2005]

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

[1/2005]

[Companies, s. 106B]

Offer made to institutional investors

274. Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, whether or not they have been previously issued, made to an institutional investor.

[1/2005]

[Companies, s. 106C]

Offer made to accredited investors and certain other persons

275.—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, whether or not they have been previously issued, where the offer is made to a relevant person, if —

- (a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
 - (i) the holder of a capital markets services licence to deal in securities;
 - (ii) an exempt person in respect of dealing in securities; or
 - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(1A) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities to a person who acquires the securities as principal, whether or not the securities have been previously issued, if —

- (a) the offer is on terms that the securities may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;
- (b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
 - (i) the holder of a capital markets services licence to deal in securities;

- (ii) an exempt person in respect of dealing in securities;
or
- (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(2) In this section —

“advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer in respect of securities, but does not include —

- (i) an information memorandum;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or recognised securities exchange, which is made by any person; or
- (iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;

“information memorandum” means a document —

- (a) purporting to describe the securities being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity; and
- (b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (1A) is to be made so

as to assist them in making an investment decision in respect of the securities being offered;

“relevant person” means —

- (a) an accredited investor;
- (b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;
- (c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;
- (d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or
- (e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[1/2005]

(2A) In the definition of “information memorandum” in subsection (2), the reference to the affairs of the person making the offer, the issuer or, where applicable, the underlying entity shall —

- (a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2 (2); and
- (b) in any other case, be construed as referring to such matters as may be prescribed by the Authority.

[1/2005]

(3) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires securities under section 274 or this section for his own account shall be considered an exempt person even though he does not comply with that requirement.

[1/2005]

(4) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (1A) (a).

[1/2005]

Offer of securities acquired pursuant to section 274 or 275

276.—(1) Notwithstanding sections 272A, 272B, 273 (1) (d), (e) and (f), 277, 278 and 279, where securities initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold within the period of 6 months from the date of the initial acquisition to any person other than —

- (a) an institutional investor;
 - (b) a relevant person as defined in section 275 (2); or
 - (c) any person pursuant to an offer referred to in section 275 (1A),
- then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale.

[1/2005]

(2) Where securities initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold to —

- (a) an institutional investor;
 - (b) a relevant person as defined in section 275 (2); or
 - (c) any person pursuant to an offer referred to in section 275 (1A),
- Subdivisions (2) and (3) of this Division shall not apply to the offer resulting in that sale.

[1/2005]

(3) Securities of a corporation (other than a corporation that is an accredited investor) —

- (a) the sole business of which is to hold investments; and
- (b) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any securities pursuant to an offer made in reliance on an exemption under section 275 unless —

- (i) that transfer —

- (A) is made only to institutional investors or relevant persons as defined in section 275 (2); or

- (B) arises from an offer referred to in section 275 (1A);

- (ii) no consideration is or will be given for the transfer; or

- (iii) the transfer is by operation of law.

[1/2005]

(4) Where —

- (a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and

- (b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust shall not be transferred within 6 months after securities are acquired for the trust pursuant to an offer made in reliance on an exemption under section 275 unless —

- (i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 275 (2); or

(B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

- (ii) no consideration is or will be given for the transfer; or

- (iii) the transfer is by operation of law.

[1/2005]

(5) For the avoidance of doubt, the reference to beneficiaries in subsection (4) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

[1/2005]

(6) For the avoidance of doubt, where any securities are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275, an offer to sell those securities may be made in reliance on an exemption under section 273 (1) (d) or (e) after 6 months have elapsed from the date of the first-mentioned offer.

[1/2005]

[Companies, s. 106E]

Offer made using offer information statement

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

- (a) in the case where the securities offered are units of shares or debentures, the shares or debentures are those of the entity that issued the units;

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

[1/2005]

(1A) Subsection (1) shall apply to an offer of securities referred to therein only for a period of 6 months from the date of lodgment of the offer information statement relating to that offer.

[1/2005]

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

[16/2003]

(3) Sections 249, 249A, 253, 254 and 255 shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

[1/2005]

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

- (a) a reference in section 249 or 249A to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and
- (b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 shall be read as a reference to any information prescribed under subsection (1) (b).

[16/2003; 1/2005]

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

[16/2003; 1/2005]

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

[1/2005]

[Companies, s. 106F]

Offer in respect of international debentures

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

- (a) is made by the holder of a capital markets services licence to deal in securities or an exempt person under section 99 (1) (a) or (b), to such institutional, professional or business investors as the Authority may, by order in the *Gazette*, specify, being persons or bodies that appear to the Authority to have sufficient expertise to understand any risk involved in buying or selling those debentures, or units of debentures (whether as principal or agent); and
- (b) complies with the conditions specified in subsection (2).

[1/2005]

(2) The conditions referred to in subsection (1) (b) are that —

- (a) the debentures, or units of debentures, are denominated in a currency, other than the Singapore dollar, and each debenture, or each unit of debenture, has a face value of at least US\$5,000 or its equivalent in another currency; and
- (b) the shares of the issuing corporation are listed on a recognised securities exchange or the offer is guaranteed by a corporation whose shares are listed on a recognised securities exchange.

[1/2005]

(3) The Authority may by order in the *Gazette* add to, vary or amend the conditions specified in subsection (2).

[Companies, s. 106G]

Offer of debentures made by Government or international financial institutions

279. Subdivisions (2) and (3) of this Division shall not apply to an offer of debentures, or units of debentures, made by or guaranteed by —

- (a) the Government; or
- (b) an international financial institution in which Singapore holds membership of any class or description, whether or not it holds any share in the share capital of that institution.

[1/2005]

[Companies, s. 106H]

Making offer using automated teller machine or electronic means

280.—(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of securities using —

- (a) any automated teller machine; or
- (b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 240 (1) (a) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 240 (4) that the offer be made in or accompanied by a profile statement in respect of the offer.

[1/2005]

(2) For the avoidance of doubt, a prospectus which complies with all other requirements of section 240 (1) (a) or, where applicable, a profile statement which complies with all other requirements of section 240 (4) must still be prepared and issued in respect of any offer referred to in subsection (1).

[1/2005]

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase securities.

[1/2005]

Revocation of exemption

281.—(1) Where the Authority considers that a person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section 273 (6), or that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

[16/2003]

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section shall be final and conclusive and there shall be no appeal therefrom.

[Companies, s. 106J]

Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act

282. For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[Companies, s. 106L]

[1/2005]

Division 1A — Business Trusts

Subdivision (1) — Interpretation

Preliminary provisions

282A.—(1) In this Division, unless the context otherwise requires —

“chief executive officer”, in relation to a corporation, means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;

“control”, in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

- (a) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and

- (b) any practice or pattern of behaviour of that person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

“expert” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

“issuer”, in relation to an offer of units or derivatives of units in a business trust, means —

- (a) in the case of units being offered, the trustee of the business trust in its capacity as the trustee that issued or will be issuing such units; or
- (b) in the case of derivatives of units being offered, the trustee of the business trust in its capacity as the trustee, or any other entity, that issued or will be issuing such derivatives of units;

“minimum subscription”, in relation to any units or derivatives of units in a business trust offered for subscription, means the amount stated in the prospectus relating to the offer, as the minimum amount which must be raised by the issue of the units or derivatives of units so offered failing which no units or derivatives of units will be allotted or issued;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, units or derivatives of units in a business trust or proposed business trust to be issued or sold and which contains the information required to be included in a prospectus under section 282F, except for such information as may be prescribed by the Authority;

“profile statement” means a profile statement referred to in section 282C (4);

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

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of units or derivatives of units in a business trust or proposed business trust and includes any document deemed to be a prospectus under section 282Q, but does not include —

- (a) a profile statement; or
- (b) any material, advertisement or publication which is authorised by section 282L (other than subsection (5) thereof);

“recognised securities exchange” means a corporation which has been declared by the Authority, by order published in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

“related party” means —

- (a) in relation to an entity —
 - (i) a director or equivalent person of the entity;
 - (ii) the chief executive officer or equivalent person of the entity;
 - (iii) a person who controls the entity;
 - (iv) a related corporation;
 - (v) any other entity controlled by it;
 - (vi) any other entity controlled by the person referred to in sub-paragraph (iii); and
 - (vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and
- (b) in relation to an individual —
 - (i) his immediate family;

(ii) a trustee of any trust of which the individual or any member of the individual's immediate family is —

(A) a beneficiary; or

(B) where the trust is a discretionary trust, a discretionary object,

when the trustee acts in that capacity; and

(iii) any corporation in which he and his immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the votes attached to all voting shares;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 282D (1), as the case may be;

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 282D (1), as the case may be;

“trustee-manager” —

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

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

“trust deed” has the same meaning as “deed” in section 2 of the Business Trusts Act;

“trust property” has the same meaning as in section 2 of the Business Trusts Act.

[1/2005]

(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

[1/2005]

(3) For the purposes of this Division, a person makes an offer of any units or derivatives of units in a business trust if, and only if, as principal —

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

[1/2005]

(4) In subsection (3), “sale” includes any disposal for valuable consideration.

[1/2005]

[SFA, s. 239]

Division not to apply to certain business trusts which are collective investment schemes

282B. This Division does not apply to an offer of units or derivatives of units in a business trust, where —

- (a) the business trust is also a collective investment scheme that has been authorised under section 286 or recognised under section 287; or
- (b) the business trust is also a collective investment scheme and the offer is made in reliance on an exemption under Subdivision (4) of Division 2.

[1/2005]

Subdivision (2) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

282C.—(1) No person shall make an offer of units or derivatives of units in a business trust unless —

- (a) the business trust is a registered business trust; and
- (b) the offer —
 - (i) is made in or accompanied by a prospectus in respect of the offer —

- (A) that is prepared in accordance with section 282F;
 - (B) a copy of which, being one that has been signed in accordance with subsection (5), is lodged with the Authority; and
 - (C) that is registered by the Authority; and
- (ii) complies with such requirements as may be prescribed by the Authority.

[1/2005]

(2) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

[1/2005]

(3) A preliminary document referred to in subsection (2) shall contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

[1/2005]

(4) Notwithstanding subsection (1), an offer of units or derivatives of units in a business trust may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this section as a profile statement), instead of a prospectus, if —

- (a) a prospectus in respect of such offer is prepared in accordance with section 282F, and the profile statement is prepared in accordance with section 282G;
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (5), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer complies with such requirements as may be prescribed by the Authority.

[1/2005]

(5) The copy of a prospectus or profile statement lodged with the Authority shall be signed —

- (a) where the person making the offer is the issuer, by every director or equivalent person of the issuer and every person

who is named therein as a proposed director or an equivalent person of the issuer;

(b) where the person making the offer is an individual and is not the issuer —

(i) by that person; and

(ii) if the issuer is controlled by that person, one or more of his related parties, or that person and one or more of his related parties, by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; and

(c) where the person making the offer is an entity and is not the issuer —

(i) by every director or equivalent person of that entity; and

(ii) if the issuer is controlled by that entity, one or more of its related parties, or that entity and one or more of its related parties, by every director or equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer.

[1/2005]

(6) A requirement under subsection (5) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(a) by that director or equivalent person; or

(b) by a person who is authorised in writing by that director or equivalent person to sign on his behalf.

[1/2005]

(7) A requirement under subsection (5) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(a) by that proposed director or equivalent person; or

(b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his behalf.

[1/2005]

(8) No person shall make any offer of units or derivatives of units in a business trust that has not been formed or does not exist.

[1/2005]

(9) Any person who contravenes subsection (1) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(10) The Authority may register a prospectus or profile statement on any day between the 14th and 21st days (both days inclusive) from the date of lodgment thereof with the Authority, unless —

- (a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (20);
- (b) the Authority gives to the person making the offer notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (20);
- (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends —
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (20); or
- (d) the person making the offer gives a notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

[1/2005]

(11) Where, after a notice of an opportunity to be heard has been given under subsection (10) (a), (b) (ii) or (c) (ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date shall not be earlier than the 14th day from the date of lodgment of the prospectus or profile statement with the Authority.

[1/2005]

(12) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (5) and which contains the information required to be stipulated in the prospectus under section 282F, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.

[1/2005]

(13) A person making an offer of units or derivatives of units in a business trust may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before but not after the registration of the prospectus or profile statement by the Authority.

[1/2005]

(14) Subject to subsection (15) —

(a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be deemed, for the purposes of subsection (10), to have been lodged when such amendment was lodged; and

(b) where any amendment to a profile statement is lodged, the profile statement shall be deemed, for the purposes of subsection (10), to have been lodged when such amendment was lodged.

[1/2005]

(15) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended shall be deemed, for the purposes of subsection (10), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

[1/2005]

(16) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

[1/2005]

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

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

(b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A (1), and, for the purposes of this subsection, the person making the offer shall provide the Authority with a copy of the prospectus or profile

statement and, where applicable, the translation, in such form or medium for publication as the Authority may require.

[1/2005]

- (18) The Authority shall refuse to register a prospectus if —
- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
 - (b) there is an omission from the prospectus of any information that is required to be included in it under section 282F;
 - (c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (5);
 - (d) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
 - (e) any written consent of an expert to the issue of the prospectus required under section 282I, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (f) any written consent of an issue manager to the issue of the prospectus required under section 282J (1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
 - (g) any written consent of an underwriter to the issue of the prospectus required under section 282J (2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or
 - (h) the Authority is of the opinion that it is not in the public interest to do so.

[1/2005]

- (19) The Authority shall refuse to register a profile statement if —
- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
 - (b) there is an omission from the profile statement of information required under section 282G to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;
 - (c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (5);
 - (d) any written consent of an expert to the issue of the profile statement required under section 282I, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

- (e) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
- (f) the prospectus has not been registered by the Authority;
- (g) any written consent of an issue manager to the issue of the profile statement required under section 282J (1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (h) any written consent of an underwriter to the issue of the profile statement required under section 282J (2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or
- (i) the Authority is of the opinion that it is not in the public interest to do so.

[1/2005]

(20) The Authority shall not refuse to register a prospectus under subsection (18) or a profile statement under subsection (19) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer, the trustee-manager of the business trust or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere; or
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager of the business trust, or in relation to or in respect of the trust property of the business trust.

[1/2005]

(21) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (18) or (19), appeal to the Minister whose decision shall be final.

[1/2005]

(22) If —

- (a) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or
- (b) an application to subscribe for or purchase units or derivatives of units in a business trust is accepted, or units or derivatives of units in a business trust are allotted, issued or sold, before a prospectus and, where applicable, profile statement, where applicable, in respect of the units or derivatives of units has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

- (i) the issue, circulation or distribution of the prospectus or profile statement;
- (ii) the acceptance of the application to subscribe for or purchase the units or derivatives of units; or
- (iii) the allotment, issue or sale of the units or derivatives of units,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

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

[1/2005]

(24) For the purposes of subsections (18) (a) and (19) (a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[SFA, s. 240]

Lodging supplementary document or replacement document

282D.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of units or derivatives of units in a business trust, the person making that offer becomes aware of —

- (a) a false or misleading statement in the prospectus or profile statement;

- (b) an omission from the prospectus of any information that should have been included in it under section 282F, or an omission from the profile statement of any information that should have been included in it under section 282G, as the case may be; or
 - (c) a new circumstance that —
 - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
 - (ii) would have been required by —
 - (A) section 282F to be included in the prospectus; or
 - (B) section 282G to be included in the profile statement,
if it had arisen before the prospectus or the profile statement, as the case may be, was lodged,
and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.
- [1/2005]
- (2) At the beginning of a supplementary document, there shall be —
 - (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
 - (b) an identification of the prospectus or profile statement it supplements;
 - (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and
 - (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.
- [1/2005]
- (3) At the beginning of a replacement document, there shall be —
 - (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
 - (b) an identification of the prospectus or profile statement it replaces.
- [1/2005]

(4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

[1/2005]

(5) The person making the offer shall take reasonable steps —

- (a) to inform potential investors of the lodgment of any supplementary or replacement document under subsection (1); and
- (b) to make available to them the supplementary document or replacement document.

[1/2005]

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

- (a) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and
- (b) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

[1/2005]

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

- (a) where the replacement document is a replacement prospectus, the prospectus in relation to the offer shall be taken to be the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement in relation to the offer shall be taken to be the replacement profile statement.

[1/2005]

(8) If a supplementary document or replacement document is lodged with the Authority, the offer shall be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

[1/2005]

(9) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the

original prospectus or profile statement to subscribe for units or derivatives of units in a business trust, then —

(a) where the units or derivatives of units have not been issued to the applicants, the person making the offer —

(i) shall —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or

(iii) shall —

(A) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the units or derivatives of units in the business trust; or

(b) where the units or derivatives of units have been issued to the applicants, the person making the offer —

(i) shall —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those units or derivatives of units in the business trust which they do not wish to retain title in; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

(ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those units or derivatives of units in the business trust which they do not wish to retain title in; or

(iii) shall —

(A) treat the issue of the units or derivatives of units in the business trust as void, in which case the issue shall be deemed void; and

(B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the units or derivatives of units.

[1/2005]

1.4.2006

(10) An applicant who wishes to exercise his option under subsection (9) (a) (i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days from the receipt of such notification, pay to the applicant all moneys paid by him on account of his application for the units or derivatives of units in the business trust.

[1/2005]

(11) An applicant who wishes to exercise his option under subsection (9) (b) (i) or (ii) to return units or derivatives of units in the business trust issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to be evidence of title to those units or derivatives of units to that person, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by the applicant for the units or derivatives of units in the business trust, and the issue of those units or derivatives of units shall be deemed to be void.

[1/2005]

(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase units or derivatives of units in a business trust, then —

(a) where the units or derivatives of units have not been transferred to the applicants, the person making the offer —

(i) shall —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; and

(B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have

indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

- (ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or
- (iii) shall —
 - (A) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled; and
 - (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the units or derivatives of units in the business trust; or
- (b) where the units or derivatives of units have been transferred to the applicants, the person making the offer —
 - (i) shall —
 - (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those units or derivatives of units in the business trust which they do not wish to retain title in; and
 - (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the

case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;

- (ii) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return, to the person making the offer, those units or derivatives of units in the business trust which they do not wish to retain title in; or
- (iii) shall treat the sale of the units or derivatives of units in the business trust as void, in which case the sale shall be deemed void, and shall —
 - (A) if documents purporting to evidence title to the units or derivatives of units (referred to in this paragraph as the title documents) have been issued to the applicants —
 - (AA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return the title documents to the person making the offer within 14 days from the date of lodgement of the supplementary document or replacement document; and
 - (AB) within 7 days from the date of the receipt of the title documents or the date of lodgment of the supplementary document or replacement document, whichever is the later, pay to the applicants all moneys paid by them for the units or derivatives of units; or
 - (B) if no title documents have been issued to the applicants, within 7 days from the date of the

lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the units or derivatives of units.

[1/2005]

(13) An applicant who wishes to exercise his option under subsection (12) (a) (i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days of the receipt of such notification, pay to him all moneys paid by him on account of his application for the units or derivatives of units in the business trust.

[1/2005]

(14) An applicant who wishes to exercise his option under subsection (12) (b) (i) or (ii) to return units or derivatives of units in the business trust sold to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents, if any, purporting to evidence title to those units or derivatives of units to the person making the offer, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by him for the units or derivatives of units and the sale of those units or derivatives of units shall be deemed to be void.

[1/2005]

(15) Any person who contravenes subsection (9) or (12) 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.

[1/2005]

(16) Any person who contravenes any other provision of 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.

[1/2005]

(17) For the purposes of subsection (1) (a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[SFA, s. 241]

Stop order for prospectus and profile statement

282E.—(1) If a prospectus has been registered and —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included in it under section 282F;
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

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

[1/2005]

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

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
- (b) there is an omission from the profile statement of any information that is required to be included in it under section 282G;
- (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may, by an order in writing (referred to in this section as a stop order) served on the person making the offer of the units or derivatives of units in a business trust to which the profile statement relates, direct that no or no further units or derivatives of units in the business trust allotted, issued or sold.

[1/2005]

(3) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the units or derivatives of units in a business trust to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on a securities exchange and trading in them has commenced.

[1/2005]

(4) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer, the trustee-manager of the business trust or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (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, the trustee-manager of the business trust or, in relation to or in respect of the trust property of the business trust.

[1/2005]

(5) Where applications to subscribe for units or derivatives of units in a business trust to which the prospectus or profile statement relates have been made prior to the stop order, then —

- (a) where the units or derivatives of units have not been issued to the applicants —
 - (i) the applications shall be deemed to have been withdrawn and cancelled; and
 - (ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the units or derivatives of units; or
- (b) where the units or derivatives of units have been issued to the applicants —
 - (i) the issue of the units or derivatives of units shall be deemed to be void; and
 - (ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the units or derivatives of units.

[1/2005]

(6) Where applications to purchase units or derivatives of units in a business trust to which the prospectus or profile statement relates have been made prior to the stop order, then —

(a) where the units or derivatives of units have not been transferred to the applicants —

(i) the applications shall be deemed to have been withdrawn and cancelled; and

(ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the units or derivatives of units; or

(b) where the units or derivatives of units have been transferred to the applicants, the sale shall be deemed to be void, and the person making the offer shall —

(i) if documents purporting to evidence title to the units or derivatives of units have been issued to the applicants —

(A) within 7 days from the date of the stop order, inform the applicants to return such documents to the person making the offer within 14 days from that date; and

(B) within 7 days from the date of the receipt of those documents or the date of the stop order, whichever is the later, pay to the applicants all moneys paid by them for the units or derivatives of units; or

(ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the units or derivatives of units.

[1/2005]

(7) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person making the offer directing that no or no further units or derivatives of units in a business trust to which the prospectus or profile statement relates be allotted, issued or sold.

[1/2005]

(8) An interim stop order shall, unless revoked by the Authority, be in force —

(a) in a case where —

- (i) it is served during a hearing under subsection (4); or
- (ii) a hearing under subsection (4) is commenced while it is in force,

until the Authority makes an order under subsection (1) or (2); and

(b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

[1/2005]

(9) Subsections (5) and (6) shall not apply where only an interim stop order has been served.

[1/2005]

(10) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(11) Any person who contravenes subsection (5) or (6) 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.

[1/2005]

(12) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[SFA, s. 242]

Contents of prospectus

282F.—(1) A prospectus for an offer of units or derivatives of units in a business trust shall contain —

- (a) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and

(b) the matters prescribed by the Authority.

[1/2005]

(2) The prospectus shall, with respect to subsection (1) (a), contain such information —

(a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and

(b) only to the extent that a person whose knowledge is relevant —

(i) actually knows the information; or

(ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

[1/2005]

(3) The matters referred to in subsection (1) (a) shall relate to —

(a) the rights and liabilities attaching to the units or derivatives of units in the business trust;

(b) where the person making the offer of units or derivatives of units in the business trust is the trustee-manager of the business trust or the trustee-manager of the business trust is controlled by —

(i) the person making the offer;

(ii) one or more of the related parties of the person making the offer; or

(iii) the person making the offer and one or more of his related parties,

the assets and liabilities, profits and losses and financial position and performance of the business trust and of the trustee-manager, and the prospects of the business trust;

(c) where derivatives of units in the business trust are issued by an entity other than the trustee-manager of the business trust and the person making the offer is that entity or that entity is controlled by —

(i) the person making the offer;

(ii) one or more of the related parties of the person making the offer; or

(iii) the person making the offer and one or more of his related parties,

the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; and

(d) in the case of an offer of derivatives of units in the business trust, where the person making the offer, or an entity which is controlled by —

- (i) the person making the offer;
- (ii) one or more of the related parties of the person making the offer; or
- (iii) the person making the offer and one or more of his related parties,

is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units, the capacity of that person or entity to issue or deliver the relevant units or derivatives of units in that business trust, or the ability of that person or entity to meet those financial or contractual obligations.

[1/2005]

(4) In deciding what information shall be included under subsection (1) (a), regard shall be had to —

- (a) the nature of the units or derivatives of units in the business trust and the nature of the business trust concerned;
- (b) the matters that likely investors may reasonably be expected to know; and
- (c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.

[1/2005]

(5) For the purposes of subsection (2) (b), a person's knowledge is relevant only if he is one of the following persons:

- (a) the person making the offer;
- (b) if the person making the offer is an entity, a director or equivalent person of the entity;
- (c) the issuer;
- (d) a director or equivalent person, or a proposed director or equivalent person, of the issuer;
- (e) a person named in the prospectus with his consent as an underwriter to the issue or sale;

- (f) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;
- (g) a person named in the prospectus with his consent as having made a statement —
 - (i) that is included in the prospectus; or
 - (ii) on which a statement made in the prospectus is based;
- (h) a person named in the prospectus with his consent as having performed a particular professional or advisory function.

[1/2005]

(6) A condition requiring or binding an applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

[1/2005]

(7) This section does not affect any liability that a person has under any other law.

[1/2005]

(8) In subsection (3) (b), “assets and liabilities, profits and losses, financial position and performance, and prospects”, in relation to a business trust, means —

- (a) the assets and liabilities, profits and losses, financial position and performance of that business trust derived from the accounting records and other records kept by the trustee-manager of that business trust; and
- (b) the business and financial prospects anticipated with respect to the operations of the trustee-manager of the business trust in its capacity as trustee-manager of the business trust.

[1/2005]

[SFA, s. 243]

Contents of profile statement

282G.—(1) A profile statement for an offer of units or derivatives of units in a business trust shall contain —

- (a) the following particulars:
 - (i) identification of the business trust, the trustee-manager of the business trust, the person making the offer and the issuer;

- (ii) identification of the persons signing the profile statement;
 - (iii) the nature of the units or derivatives of units;
 - (iv) the nature of the risks involved in investing in the units or derivatives of units; and
 - (v) details of all amounts payable in respect of the units or derivatives of units (including any amount by way of fee, commission or charge);
- (b) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and
- (c) a statement that the persons referred to in section 282C (5) who have signed the profile statement are satisfied that the profile statement contains a fair summary of the key information in the prospectus.

[1/2005]

(2) A profile statement shall not contain —

- (a) any statement that is false or misleading in the form and context in which it is included;
- (b) any material information that is not contained in the prospectus; and
- (c) any material information that differs in any material particular from that set out in the prospectus.

[1/2005]

(3) For the purposes of subsection (2) (a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[SFA, s. 246]

Exemption from requirements as to form or content of prospectus or profile statement

282H.—(1) The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as may be determined by the Authority.

[1/2005]

(2) The Authority shall not grant an exemption under subsection (1) unless it is of the opinion that —

- (a) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or
- (b) it would not be prejudicial to the public interest if the requirement in respect of which the exemption has been applied for were dispensed with.

[1/2005]

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

[1/2005]

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

[1/2005]

[SFA, s. 247]

Expert's consent to issue of prospectus or profile statement containing statement by him

282I.—(1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement which includes a statement purporting to be made by, or based on a statement made by, an expert, the prospectus or profile statement shall not be issued unless —

- (a) the expert has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) there appears in the prospectus or profile statement, as the case may be, a statement that the expert has given and has not withdrawn his consent.

[1/2005]

(2) Every person making the offer shall cause a true copy of every written consent referred to in subsection (1) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if the issuer has no

registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

[1/2005]

(3) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the units or derivatives of units in the business trust to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (2) for a period of at least 6 months after the registration of the prospectus or profile statement.

[1/2005]

(4) If any prospectus or profile statement is issued in contravention of subsection (1), the person making the offer and every person who is knowingly a party to the issue thereof 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.

[1/2005]

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

[1/2005]

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

[1/2005]

[SFA, s. 249]

Consent of issue manager and underwriter to being named in prospectus or profile statement

282J.—(1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement in which a person is named as the issue manager to the offer, the prospectus or profile statement shall not be issued unless —

- (a) the person has given, and has not before the registration of the prospectus or profile statement, as the case may

be, withdrawn his written consent to being named in the prospectus or profile statement as issue manager to that offer; and

- (b) there appears in the prospectus or profile statement, as the case may be, a statement that the person has given and has not withdrawn his consent.

[1/2005]

(2) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement in which a person is named as the underwriter (but not a sub-underwriter) to the offer, the prospectus or profile statement shall not be issued unless —

- (a) the person has given, and has not before the registration of the prospectus or profile statement, as the case may be, withdrawn his written consent to being named in the prospectus or profile statement as underwriter to that offer; and
- (b) there appears in the prospectus or profile statement, as the case may be, a statement that the person has given and has not withdrawn such consent.

[1/2005]

(3) If any prospectus or profile statement is issued in contravention of subsection (1) or (2), the person making the offer and every person who is knowingly a party to the issue thereof 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.

[1/2005]

(4) Every person making the offer shall cause a true copy of every written consent referred to in subsections (1) and (2) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

[1/2005]

(5) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the units or derivatives of units in the business trust to

which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (4) for a period of at least 6 months after the registration of the prospectus or profile statement.

[1/2005]

Duration of validity of prospectus and profile statement

282K.—(1) No person shall make an offer of units or derivatives of units in a business trust, or allot, issue or sell any units or derivatives of units in a business trust, on the basis of a prospectus or profile statement after the expiration of a period of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

[1/2005]

(2) In a case where an entity makes an offer of units or derivatives of units in a business trust or where the units or derivatives of units in a business trust being offered are those issued by an entity or a proposed entity, no officer or equivalent person or promoter of the entity or proposed entity shall authorise or permit —

- (a) the offer of those units or derivatives of units; or
- (b) the allotment, issue or sale of those units or derivatives of units,

on the basis of a prospectus or profile statement after the expiration of a period of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

[1/2005]

(3) If default is made in complying with subsection (1) or (2), the person and, in the case of an entity or proposed entity, every officer or equivalent person or promoter of the entity or proposed entity 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.

[1/2005]

(4) An allotment, an issue or a sale of units or derivatives of units in a business trust that is made in contravention of subsection (1) or (2) shall not, by reason only of that fact, be voidable or void.

[1/2005]

[SFA, s. 250]

Restrictions on advertisements, etc.

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

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

unless the advertisement or publication is authorised by this section.

[1/2005]

(2) In determining whether a statement —

- (a) indirectly refers to an offer or intended offer of units or derivatives of units in a business trust; or
- (b) is reasonably likely to induce persons to subscribe for or purchase units or derivatives of units in a business trust,

regard shall be had to whether the statement —

- (i) forms part of —
 - (A) the normal advertising by a trustee-manager of a business trust on behalf of the business trust in respect of the products or services offered by the trustee-manager on behalf of the business trust, and is genuinely directed at maintaining existing customers, or attracting new customers, for those products or services; or
 - (B) the normal advertising of an entity's products or services, and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services;
- (ii) communicates information that materially deals with the affairs of the business trust or the entity; and
- (iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

[1/2005]

(3) Notwithstanding subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with

the Authority to institutional investors, relevant persons as defined in section 282Z (3) or persons to whom an offer referred to in section 282Z (2) is to be made without contravening subsection (1), if —

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

(i) the following statement:

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

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

(iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the preliminary document to purchase or subscribe for any units or derivatives of units in the business trust to which the preliminary document relates;

(b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the units or derivatives of units in the business trust to which the preliminary document relates, or the acceptance of such an offer by any person; and

(c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

[1/2005]

(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting oral or written material, on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 282Z (3) or persons to whom an offer referred to in section 282Z (2) is to be made before a prospectus or profile statement is registered by the Authority.

[1/2005]

(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 282C without contravening subsection (1).

[1/2005]

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

- (a) a statement that identifies the units or derivatives of units in the business trust, the person making the offer, the issuer, the business trust and the trustee-manager of the business trust;
- (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
- (c) a statement that anyone wishing to acquire the units or derivatives of units in the business trust will need to make an application in the manner set out in the prospectus or profile statement; and
- (d) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.

[1/2005]

(7) To satisfy subsection (6), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the statement referred to in paragraph (d).

[1/2005]

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

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

[1/2005]

(9) An advertisement or a publication does not contravene subsection (1) if it —

- (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a

securities exchange, futures exchange or recognised securities exchange made by any person;

- (b) consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee-manager of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;
- (c) consists solely of a report about the issuer or the business trust whose units or derivatives of units are the subject of the offer or intended offer that is published by the person making the offer, the issuer or the trustee-manager of the business trust, which —
 - (i) does not contain information that materially affects the affairs of the issuer or the business trust other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a disclosure, notice or report referred to in paragraph (a) or (b); and
 - (ii) does not refer (directly or indirectly) to the offer or intended offer;
- (d) consists solely of a statement made by the person making the offer, the issuer or the trustee-manager of the business trust that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;
- (e) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (f) (i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio, television or any other means of broadcasting or communication, relating to —
 - (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;
 - (ii) a disclosure, notice or report referred to in paragraph (a);
 - (iii) a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (b);
 - (iv) a report referred to in paragraph (c);

- (f) is a report about the units or derivatives of units in a business trust which are the subject of the offer or intended offer, published by someone who is not —
 - (i) the person making the offer, the issuer or the trustee-manager of the business trust;
 - (ii) a director or equivalent person of the person making the offer, the issuer or the trustee-manager of the business trust;
 - (iii) a person who has an interest in the success of the issue or sale of the units or derivatives of units in the business trust; or
 - (iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);
- (g) is a report about the units or derivatives of units in a business trust which are the subject of the offer or intended offer, published and delivered to any institutional investor not later than 14 days prior to the date of lodgment of the prospectus, provided that —
 - (i) the offer is also made or will also be made in one or more other countries;
 - (ii) the publication and delivery of such report in that other country or any one of those other countries do not infringe any law, code or other requirement of that country;
 - (iii) the report and the manner of its publication and delivery in Singapore comply with such other requirements as may be prescribed by the Authority; and
 - (iv) the person issuing the report complies with such requirements as may be prescribed by the Authority; or
- (h) is a publication made by the person making the offer, the issuer or the trustee-manager of the business trust solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —
 - (i) an earlier news report or a genuine comment referred to in paragraph (e); or

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

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

[1/2005]

- (10) A person does not contravene subsection (1) if —

- (a) he publishes any advertisement or publication in the ordinary course of a business of —

- (i) publishing a newspaper, periodical or magazine; or
 - (ii) broadcasting by radio, television or any other means of broadcasting or communication; and

- (b) he did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

[1/2005]

(11) Subsection (9) (e) and (f) shall not apply to an advertisement or a statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

[1/2005]

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

[1/2005]

(13) This section does not affect any liability that a person has under any other law.

[1/2005]

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

[1/2005]

(15) Any person who contravenes any of the conditions or restrictions imposed under subsection (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and,

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

[1/2005]

(16) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

[1/2005]

(17) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(18) For the purposes of subsection (2) (ii), the reference to affairs of the business trust or the entity shall —

- (a) in the case of the business trust, be construed to refer to such matters as may be prescribed by the Authority;
- (b) in the case where the entity is a corporation, be construed as including a reference to the matters referred to in section 2 (2); and
- (c) in the case where the entity is not a corporation, be construed to refer to such matters as may be prescribed by the Authority.

[1/2005]

(19) For the purposes of subsection (9) (c) (i), the reference to affairs of the issuer or the business trust shall —

- (a) in the case where the issuer is a corporation, be construed as including a reference to the matters referred to in section 2 (2);
- (b) in the case where the issuer is not a corporation, be construed to refer to such matters as may be prescribed by the Authority; and
- (c) in the case of the business trust, be construed to refer to such matters as may be prescribed by the Authority.

[1/2005]

[SFA, s. 251]

Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies

282M.—(1) A person referred to in section 282O (3) (other than paragraph (a)) shall notify in writing the person making the offer of units or derivatives of units in a business trust, as soon as practicable,

if he becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer that —

- (a) a statement in the prospectus or the profile statement is false or misleading;
- (b) there is an omission to state any information required to be included in the prospectus under section 282F or there is an omission to state any information required to be included in the profile statement under section 282G, as the case may be; or
- (c) a new circumstance —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required to be included in the prospectus under section 282F, or required to be included in the profile statement under section 282G, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

and the failure to so notify would have been materially adverse from the point of view of an investor.

[1/2005]

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

[1/2005]

(3) For the purposes of subsection (1) (a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[SFA, s. 252]

Criminal liability for false or misleading statements

282N.—(1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 282ZC, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

- (a) a false or misleading statement is contained in —
 - (i) the prospectus or the profile statement; or

- (ii) any application form for the units or derivatives of units;
- (b) there is an omission to state any information required to be included in the prospectus under section 282F or there is an omission to state any information required to be included in the profile statement under section 282G, as the case may be; or
- (c) there is an omission to state a new circumstance that —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required to be included in the prospectus under section 282F, or required to be included in the profile statement under section 282G, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.

[1/2005]

(3) A person shall not be taken to have contravened subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.

[1/2005]

- (4) The persons guilty of the offence are —
- (a) the person making the offer;
 - (b) where the person making the offer is an entity —
 - (i) each director or equivalent person of the entity; and

- (ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;
- (c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of his related parties —
 - (i) the issuer;
 - (ii) each director or equivalent person of the issuer; and
 - (iii) each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the issuer;
- (d) an issue manager to the offer of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or profile statement, if —
 - (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
 - (ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or
 - (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;
- (e) an underwriter (but not a sub-underwriter) to the issue or sale of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or profile statement, if —
 - (i) he intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
 - (ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, he fails to take such remedial action as is appropriate in the circumstances without delay; or

- (iii) he is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;
 - (f) a person named in the prospectus or the profile statement with his consent as having made —
 - (i) the statement that is false or misleading, if he intentionally or recklessly makes that statement; or
 - (ii) a statement on which the false or misleading statement is based, if he knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw his consent,but only in respect of the inclusion of the false or misleading statement; and
 - (g) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.
- [1/2005]
- (5) For the purposes of subsection (4) and this subsection —
- (a) remedial action includes any of the following:
 - (i) preventing the statement from being included, or having the information or circumstance included, in the prospectus or profile statement, as the case may be;
 - (ii) procuring the lodgment of a supplementary or replacement prospectus under section 282D; and
 - (b) a person is reckless as to the matter referred to in subsection (4) (d) (iii) or (e) (iii) if, having been put upon inquiry that the statement to be, or which has been, included in the prospectus or profile statement is likely to be false or misleading, that the information or circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, he fails to —
 - (i) make all inquiries as are reasonable in the circumstances to verify this; and

- (ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted by the outcome of the inquiries.

[1/2005]

(6) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[SFA, s. 253]

Civil liability for false or misleading statements

282O.—(1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 282ZC, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

- (a) a false or misleading statement is contained in —
 - (i) the prospectus or the profile statement; or
 - (ii) any application form for the units or derivatives of units;
- (b) there is an omission to state any information required to be included in the prospectus under section 282F or there is an omission to state any information required to be included in the profile statement under section 282G, as the case may be; or
- (c) there is an omission to state a new circumstance that —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required to be included in the prospectus under section 282F, or required to be included in the profile statement under section 282G, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

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

[1/2005]

1.4.2006

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

[1/2005]

(3) The persons liable are —

- (a) the person making the offer;
- (b) where the person making the offer is an entity —
 - (i) each director or equivalent person of the entity; and
 - (ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;
- (c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of his related parties —
 - (i) the issuer;
 - (ii) each director or equivalent person of the issuer; and
 - (iii) each person who is, and who has consented to be, named in the prospectus or the profile statement as a proposed director or an equivalent person of the issuer;
- (d) an issue manager to the offer of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or the profile statement;
- (e) an underwriter (but not a sub-underwriter) to the issue or sale of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or the profile statement;
- (f) a person named in the prospectus or the profile statement with his consent as having made a statement —
 - (i) that is included in the prospectus or the profile statement; or
 - (ii) on which a statement made in the prospectus or the profile statement is based,but only in respect of the inclusion of that statement; and

- (g) any other person who made the false or misleading statement or omitted to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance.

[1/2005]

(4) A person who acquires units or derivatives of units in a business trust as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the units or derivatives of units in reliance on both the profile statement and the prospectus for the offer.

[1/2005]

(5) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(6) No action under subsection (1) shall be commenced after the expiration of 6 years from the date on which the cause of action arose.

[1/2005]

(7) This section shall not affect any liability that a person has under any other law.

[1/2005]

[SFA, s. 254]

Defences

282P.—(1) A person referred to in section 282N (4) (a), (b) or (c) is not liable under section 282N (1), and a person referred to in section 282O (3) is not liable under section 282O (1), only because of a false or misleading statement in a prospectus or a profile statement if the person 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 was not false or misleading.

[1/2005]

(2) A person referred to in section 282N (4) (a), (b) or (c) is not liable under section 282N (1), and a person referred to in section 282O (3) is not liable under section 282O (1), only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person 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 there was no omission from the prospectus or profile statement in relation to that matter.

[1/2005]

(3) A person is not liable under section 282N (1) or 282O (1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that he placed reasonable reliance on information given to him by —

- (a) if the person is an entity, someone other than —
 - (i) a director or equivalent person; or
 - (ii) an employee or agent, of the entity; or
- (b) if the person is an individual, someone other than an employee or agent of the individual.

[1/2005]

(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because he performs a particular professional or advisory function for the entity or individual.

[1/2005]

(5) A person who is named in a prospectus or a profile statement as —

- (a) a proposed director or equivalent person of the issuer, or an issue manager or underwriter;
- (b) having made a statement included in the prospectus or the profile statement; or
- (c) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 282N (1) or 282O (1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that he publicly withdrew his consent to being named in the prospectus or the profile statement in that way.

[1/2005]

(6) A person is not liable under section 282N (1) or 282O (1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that he was not aware of the matter.

[1/2005]

(7) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[SFA, s. 255]

Document containing offer of units or derivatives of units for sale deemed prospectus

282Q.—(1) Subsection (2) applies where —

- (a) an entity allots or agrees to allot to any person any units or derivatives of units in a business trust with a view to all or any of them being subsequently offered for sale to another person; and
- (b) such offer (referred to in this section as a subsequent offer) does not qualify for an exemption under Subdivision (3) of this Division (other than section 282ZC).

[1/2005]

(2) Any document by which the subsequent offer is made shall for all purposes be deemed to be a prospectus issued by the entity, and the entity shall for all purposes be deemed to be the person making the offer, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if —

- (a) an offer of units or derivatives of units in the business trust has been made; and
- (b) persons accepting the subsequent offer in respect of any units or derivatives of units in the business trust were subscribers therefor,

but without prejudice to the liability, if any, of the persons making the subsequent offer, in respect of statements or non-disclosures in the document or otherwise.

[1/2005]

(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, units or derivatives of units in a business trust was made with a view to the units or derivatives of units being subsequently offered for sale if it is shown —

- (a) that an offer of the units or derivatives of units or of any of them for sale was made within 6 months after the allotment or agreement to allot; or

- (b) that at the date when the offer was made the whole consideration to be received by the entity in respect of the units or derivatives of units had not been so received.

[1/2005]

(4) The requirements of this Division as to prospectuses shall have effect as though the persons making the subsequent offer were persons named in the prospectus as directors or equivalent persons of the entity.

[1/2005]

(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer shall state —

- (a) the net amount of the consideration received or to be received by the entity in respect of the units or derivatives of units in the business trust being offered; and
- (b) the place and time at which a copy of the contract under which the units or derivatives of units in the business trust have been or are to be allotted may be inspected.

[1/2005]

[SFA, s. 257]

Application and moneys to be held in trust in separate bank account until allotment

282R.—(1) All application and other moneys paid prior to allotment by any applicant on account of units or derivatives of units in a business trust offered to him shall, until the allotment of the units or derivatives of units in the business trust, be held by the person making the offer of the units or derivatives of units upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application and other moneys that are paid by applicants for those units or derivatives of units.

[1/2005]

(2) There shall be no obligation or duty on any bank with which any such moneys have been deposited to enquire into or see to the proper application of those moneys, so long as the bank acts in good faith.

[1/2005]

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

[1/2005]

[SFA, s. 258]

Allotment of units or derivatives of units where prospectus indicates application to list on securities exchange

282S.—(1) Where a prospectus states or implies that application has been or will be made for permission for the units or derivatives of units in a business trust offered thereby to be listed for quotation on any securities exchange, and —

- (a) the permission is not applied for in the form required by the securities exchange within 3 days from the date of the issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the securities exchange,

then —

- (i) any allotment whenever made of units or derivatives of units made on an application in pursuance of the prospectus shall, subject to subsection (3), be void; and
- (ii) any person who continues to allot such units or derivatives of units after the period specified in paragraph (a) or (b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(2) Where, the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer shall, subject to subsection (3), immediately repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such moneys is not repaid within 14 days after the person making the offer so becomes liable to repay them, then —

- (a) he shall be liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days; and

- (b) where the person making the offer is an entity, in addition to the liability of the entity, the directors or equivalent persons of the entity shall be jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.

[1/2005]

(3) Where in relation to any units or derivatives of units in a business trust —

- (a) permission is not applied for as specified in subsection (1) (a);
or

(b) permission is not granted as specified in subsection (1) (b), the Authority may, on the application of the issuer made before any of the units or derivatives of units is purported to be allotted, exempt the allotment of the units or derivatives of units from the provisions of this section, and the Authority shall give notice of such exemption in the *Gazette*.

[1/2005]

(4) A director or equivalent person shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

[1/2005]

(5) Any condition requiring or binding any applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section or purporting to do so shall be void.

[1/2005]

(6) Without limiting the application of any of its provisions, this section shall have effect —

- (a) in relation to any units or derivatives of units in a business trust agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and
- (b) in relation to a prospectus offering units or derivatives of units in a business trust for sale as if a reference to sale were substituted for a reference to allotment.

[1/2005]

(7) All moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).

[1/2005]

(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(9) Where the securities exchange has within the time specified in subsection (1) (b) granted permission subject to compliance with any requirements specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if the directors or equivalent persons of the issuer have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

[1/2005]

(10) If any such undertaking referred to in subsection (9) is not complied with, each director or equivalent person who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(11) A person shall not issue a prospectus inviting persons to subscribe for units or derivatives of units in a business trust if it includes —

- (a) a false or misleading statement that permission has been granted for those units or derivatives of units to be listed for quotation on, dealt in or quoted on any securities exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation, dealing in or quoting the units or derivatives of units, on any securities exchange, or to any requirement of a securities exchange, unless —
 - (i) that statement is or is to the effect that permission has been granted, or that application has been or will be made to the securities exchange within 3 days from the date of the issue of the prospectus; or
 - (ii) that statement has been approved by the Authority for inclusion in the prospectus.

[1/2005]

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

[1/2005]

(13) Where a prospectus contains a statement to the effect that the trust deed of a business trust or the memorandum and articles or other constituent document or documents of the issuer comply, or have been drawn so as to comply, with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the units or derivatives of units in the business trust to which the prospectus relates to be listed for quotation on the securities exchange.

[1/2005]

[SFA, s. 259]

Prohibition of allotment unless minimum subscription received

282T.—(1) No allotment shall be made of any units or derivatives of units in a business trust unless —

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the units or derivatives of units so subscribed has been received by the trustee-manager of the business trust,

but if a cheque for the sum payable has been received by the trustee-manager, the sum shall be deemed not to have been received by the trustee-manager until the cheque is paid by the bank on which it is drawn.

[1/2005]

(2) The minimum subscription shall —

- (a) be calculated based on the price at which each unit or derivative of a unit is offered or will be offered; and
- (b) be reckoned exclusively of any amount payable otherwise than in cash.

[1/2005]

(3) The amount payable on application for each unit or derivative of a unit offered shall not be less than 5% of the price at which the unit or derivative of a unit is or will be offered.

[1/2005]

(4) If the conditions referred to in subsection (1) (a) and (b) have not been satisfied on the expiration of 4 months after the first issue of the prospectus, all moneys received from applicants for units or derivatives of units in the business trust shall be immediately repaid to them without interest.

[1/2005]

(5) If any money referred to in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the trustee-manager of the business trust shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months; but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

[1/2005]

(6) An allotment made by the trustee-manager of a business trust of any units or derivatives of units in the business trust to an applicant in contravention of this section shall be voidable at the option of the applicant, whose option may be exercised by written notice served on the trustee-manager of the business trust within one month after the date of the allotment and not later, and the allotment shall be so voidable notwithstanding that the business trust is in the course of being wound up.

[1/2005]

(7) The trustee-manager of a business trust which contravenes any of the provisions of this section, and every director of a trustee-manager who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section, shall be guilty of an offence and shall be liable in addition to the penalty or punishment for the offence to pay into the trust property of the business trust and compensate the allottee respectively for any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) or the allottee has sustained or incurred thereby.

[1/2005]

(8) No proceedings for the recovery of any compensation under subsection (7) shall be commenced after the expiration of 2 years from the date of the allotment.

[1/2005]

(9) Any condition requiring or binding any applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section shall be void.

[1/2005]

[SFA, s. 260]

*Subdivision (3) — Exemptions***Issue or transfer of units or derivatives of units for no consideration**

282U.—(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units in a business trust if no consideration is or will be given for the issue or transfer of the units.

[1/2005]

(2) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of derivatives of units in a business trust if —

- (a) no consideration is or will be given for the issue or transfer of the derivatives of units; and
- (b) no consideration is or will be given for the units in the business trust on the exercise or conversion of the derivatives of units.

[1/2005]

Small offers

282V.—(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to personal offers of units or derivatives of units in a business trust by a person if —

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed —
 - (i) \$5 million (or its equivalent in a foreign currency); or
 - (ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);
- (b) in respect of each offer, the person making the offer —
 - (i) gives the person to whom he makes the offer —
 - (A) in the case where the business trust is not registered under the Business Trusts Act (Cap. 31A), the following statement in writing:

“This offer is made in reliance on the exemption under section 282V(1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not

registered under the Business Trusts Act.”; and

- (B) in the case where the business trust is registered under the Business Trusts Act, the following statement in writing:

“This offer is made in reliance on the exemption under section 282V (1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”; and

- (ii) gives the person to whom he makes the offer a notification in writing that the units or derivatives of units to which the offer (referred to in this sub-paragraph as the initial offer) relates shall not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —

(A) in compliance with Subdivision (2) of this Division;

(B) in reliance on subsection (8) (c) or any other exemption under any provision of this Subdivision (other than this subsection); or

(C) where at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer, in reliance on the exemption under this subsection;

- (c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

- (d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

(i) the holder of a capital markets services licence to deal in securities;

(ii) an exempt person in respect of dealing in securities; or

(iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other

requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(2) For the purposes of subsection (1) (b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

[1/2005]

(3) For the purposes of subsection (1), a personal offer of units or derivatives of units in a business trust is one that —

- (a) may be accepted only by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in that offer, having regard to —

- (i) any previous contact before the date of the offer between the person making the offer and that person;
- (ii) any previous professional or other connection established before that date between the person making the offer and that person; or
- (iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —
 - (A) the person making the offer;
 - (B) the holder of a capital markets services licence to deal in securities;
 - (C) an exempt person in respect of dealing in securities;
 - (D) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;
 - (E) an exempt financial adviser as defined in section 2 (1) of the Financial Advisers Act; or
 - (F) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction

in respect of dealing in securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind.

[1/2005]

(4) In determining the amount raised by an offer, the following shall be included:

- (a) the amount payable for the units or derivatives of units in a business trust at the time they are allotted, issued or sold;
- (b) if the units or derivatives of units in a business trust are issued partly-paid, any amount payable at a future time if a call is made;
- (c) if the units or derivatives of units in a business trust carry a right (by whatever name called) to be converted into other units or derivatives of units in the business trust or to acquire other units or derivatives of units in the business trust, any amount payable on the exercise of the right to convert them into, or to acquire, other units or derivatives of units.

[1/2005]

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1) (a), each amount raised —

- (a) by that person from any offer of units or derivatives of units in a business trust issued by the same entity; or
- (b) by that person or another person from any offer of securities which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), section 272A (1) or 302B (1) shall be included.

[1/2005]

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(7) For the purpose of this section, an offer of units or derivatives of units in a business trust made by a person acting as an agent of another person shall be treated as an offer made by that other person.

[1/2005]

(8) Where units or derivatives of units in a business trust acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the units or derivatives of units to another person, Subdivision (2) of this Division shall apply to the offer from the first-mentioned person to the second-mentioned person which resulted in that sale, unless —

- (a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);
- (b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer; or
- (c) such offer is one —
 - (i) that may be accepted only by the person to whom it is made;
 - (ii) that is made to a person who is likely to be interested in the offer having regard to —
 - (A) any previous contact before the date of the offer between the person making the initial offer and that person;
 - (B) any previous professional or other connection established before that date between the person making the initial offer and that person; or
 - (C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to —
 - (CA) the person making the initial offer;
 - (CB) the holder of a capital markets services licence to deal in securities;
 - (CC) an exempt person in respect of dealing in securities;
 - (CD) a person licensed under the Financial Advisers Act (Cap. 110) in respect of the provision of financial advisory services concerning investment products;

- (CE) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act (Cap. 110); or
 - (CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,
- that he is interested in offers of that kind;
- (iii) in respect of which the first-mentioned person has given the second-mentioned person —
 - (A) the following statement in writing —
 - (AA) in the case where the business trust is not registered under the Business Trusts Act (Cap. 31A) —

“This offer is made in reliance on the exemption under section 282V(8)(c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act.”;

and
 - (AB) in the case where the business trust is registered under the Business Trusts Act —

“This offer is made in reliance on the exemption under section 282V(8)(c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus

that is registered by the Monetary Authority of Singapore.”; and

- (B) a notification in writing that the units or derivatives of units being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

- (BA) in compliance with Subdivision (2) of this Division;

- (BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

- (BC) where at least 6 months have elapsed from the date the units or derivatives of units were acquired under the initial offer, in reliance on the exemption under subsection (1);

- (iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

- (v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

- (A) the holder of a capital markets services licence to deal in securities;

- (B) an exempt person in respect of dealing in securities; or

- (C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8) (c) (iii).

[1/2005]

(10) In subsections (1) (c) and (8) (c) (iv), “advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message, that is published in connection with an offer of units or derivatives of units in a business trust, but does not include —
 - (i) a document —
 - (A) purporting to describe the units or derivatives of units being offered, or the business and affairs of the person making the offer, the issuer, the trustee of the business trust or the business trust; and
 - (B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units or derivatives of units being offered;
 - (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or recognised securities exchange, which is made by any person; or
 - (iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting.

[1/2005]

(11) In subsection (10) (i) (A), the reference to the affairs of the person making the offer, the issuer, the trustee of the business trust or the business trust shall —

- (a) in the case where the person making the offer, the issuer or the trustee of the business trust is a corporation, be construed as including a reference to the matters referred to in section 2 (2);

- (b) in the case where the person making the offer, the issuer or the trustee of the business trust is not a corporation, be construed as referring to such matters as may be prescribed by the Authority; and
- (c) in the case of the business trust, be construed as referring to such matters as may be prescribed by the Authority.

[1/2005]

Private placement

282W.—(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to offers of units or derivatives of units in a business trust that are made by a person if —

- (a) the offers are made to no more than 50 persons within any period of 12 months;
- (b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
 - (i) the holder of a capital markets services licence to deal in securities;
 - (ii) an exempt person in respect of dealing in securities; or
 - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1) (a).

[1/2005]

(3) In determining whether offers of units or derivatives of units in a business trust by a person are made to no more than the applicable number of persons specified in subsection (1) (a) within a period of 12 months, each person to whom —

- (a) an offer of units or derivatives of units issued by the same entity is made by the first-mentioned person; or

(b) an offer of securities is made by the first-mentioned person or another person where such offer is a closely related offer, if any, within that period in reliance on the exemption under this section, section 272B or 302C shall be included.

[1/2005]

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(5) For the purposes of subsection (1) —

- (a) an offer of units or derivatives of units in a business trust to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units or derivatives of units which are the subject of the offer;
- (b) an offer of units or derivatives of units in a business trust to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the units or derivatives of units which are the subject of the offer;
- (c) an offer of units or derivatives of units in a business trust to 2 or more persons who will own the units or derivatives of units acquired as joint owners shall be treated as an offer to a single person;
- (d) an offer of units or derivatives of units in a business trust to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;
- (e) offers of units or derivatives of units in a business trust made by a person as an agent of another person shall be treated as offers made by that other person;
- (f) where an offer is made to a person with a view to another person acquiring an interest in those units or derivatives of units in a business trust by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the units or derivatives of units are made to no more than the applicable number of persons specified in subsection (1) (a); and

(g) where —

(i) an offer of units or derivatives of units in a business trust is made to a person in reliance on the exemption under subsection (1) with a view to those units or derivatives of units being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 282ZC,

both persons shall be counted for the purposes of determining whether offers of the units or derivatives of units are made to no more than the applicable number of persons specified in subsection (1) (a).

[1/2005]

(6) In subsection (1) (b), “advertisement” has the same meaning as in section 282V (10).

[1/2005]

Offer made under certain circumstances

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

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

(b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some or all of the shares of a particular class in a corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

(ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code were applicable to it;

- (c) it is made in connection with a proposed compromise or arrangement between —
 - (i) a corporation and its creditors or a class of them; or
 - (ii) a corporation and its members or a class of them,and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code were applicable to it;
- (d) it is an offer of units in a business trust that have been previously issued and are listed for quotation or quoted on a securities exchange;
- (e) it is an offer of derivatives of units in a business trust where —
 - (i) the derivatives of units have been previously issued and are listed for quotation or quoted on a securities exchange; or
 - (ii) an application has been or will be made for permission for the derivatives of units to be listed for quotation or quoted on a securities exchange and the units have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange;
- (f) it is an offer of units in a business trust made to any existing unitholder of the business trust or any holder of debentures of the trustee-manager issued in its capacity as trustee-manager of the business trust whose units are listed for quotation on a securities exchange; or
- (g) it is an offer of derivatives of units in a business trust made to any existing unitholder of the business trust or any holder of debentures of the trustee-manager issued in its capacity as trustee-manager of the business trust whose units are listed for quotation on a securities exchange, where such derivatives of units may only be exercised or converted by any existing unitholder or holder of debentures into units of the business trust.

[1/2005]

(2) An offer of units or derivatives of units in a business trust does not come within subsection (1) (d) or (e) if —

- (a) the units or derivatives of units being offered are borrowed by the issuer from an existing unitholder or holder of derivatives

of units, solely for the purpose of facilitating the offer of units or derivatives of units by the issuer; and

- (b) such borrowing is made under an agreement or arrangement between the issuer and the unitholder or holder which promises the issue or allotment of units or derivatives of units by the issuer to the unitholder or holder at the same time or shortly after the offer.

[1/2005]

(3) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust if —

- (a) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation —
 - (i) to all members of the corporation or all members of the corporation holding shares of that class; or
 - (ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs of the country in which the corporation was incorporated;

- (b) it is made in connection with a proposed compromise or arrangement between —
 - (i) an unlisted corporation and its creditors or a class of them; or
 - (ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country in which the corporation was incorporated;

- (c) it is made (whether or not in relation to units or derivatives of units in a business trust that have been previously issued)

by the trustee of the business trust to a qualifying person, where the units or derivatives of units are to be held by or for the benefit of the qualifying person and are the units or derivatives of units of the business trust or the securities of any of its related parties;

- (d) it is an offer to enter into an underwriting agreement relating to units or derivatives of units in a business trust; or
- (e) it is an offer of units or derivatives of units in a business trust —

- (i) being a business trust which is registered in Singapore or otherwise, whose units or derivatives of units are not listed for quotation on a securities exchange; or
 - (ii) being a business trust which is not registered in Singapore, whose units or derivatives of units are listed for quotation on a securities exchange and such listing is not a primary listing,

that is made to existing unitholders of the business trust or holders of debentures of the trustee issued in its capacity as trustee of the business trust (whether or not it is renounceable in favour of persons other than existing unitholders or holders of debentures).

[1/2005]

(4) An offer of units or derivatives of units in a business trust comes within subsection (3) (c) only if no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —

- (a) the holder of a capital markets services licence to deal in securities;
- (b) an exempt person in respect of dealing in securities; or
- (c) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealings.

[1/2005]

(5) For the purposes of subsection (3) (c), a person is a qualifying person in relation to a business trust if he is a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the trustee of the business

trust or a related corporation of that trustee (being a corporation), or if he is the spouse, widow, widower or a child, adopted child or step-child below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

[1/2005]

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

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

then Subdivision (2) of this Division (other than section 282Q) shall not apply to such offer for a period of 6 months from the date of the declaration.

[1/2005]

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

[1/2005]

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

[1/2005]

(9) Any person who contravenes any of the conditions or restrictions specified in the declaration made under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

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

[1/2005]

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

- (a) that is not a company; and
- (b) the shares or debentures, or units of shares or debentures of which are not listed for quotation on any securities exchange.

[1/2005]

Offer made to institutional investors

282Y. Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust, whether or not they have been previously issued, made to an institutional investor.

[SFA, s. 274]

[1/2005]

Offer made to accredited investors and certain other persons

282Z.—(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust, whether or not they have been previously issued, where the offer is made to a relevant person, if —

- (a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
 - (i) the holder of a capital markets services licence to deal in securities;
 - (ii) an exempt person in respect of dealing in securities; or
 - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(2) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust to a person who acquires the units or derivatives of units as principal, whether or not the units or derivatives of units have been previously issued, if —

- (a) the offer is on terms that the units or derivatives of units may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

1.4.2006

- (b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer; and
- (c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
 - (i) the holder of a capital markets services licence to deal in securities;
 - (ii) an exempt person in respect of dealing in securities; or
 - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(3) In this section —

“advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer in respect of units or derivatives of units in a business trust, but does not include —

- (i) an information memorandum;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or recognised securities exchange, which is made by any person; or
- (iii) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of

the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;

“information memorandum” means a document —

- (a) purporting to describe —
 - (i) the units or derivatives of units in the business trust being offered; or
 - (ii) the business and affairs of any one or more of the following —
 - (A) the issuer;
 - (B) the person making the offer;
 - (C) the business trust;
 - (D) the trustee of the business trust; and
- (b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units or derivatives of units in the business trust being offered;

“relevant person” means —

- (a) an accredited investor;
- (b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;
- (c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;
- (d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or
- (e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[1/2005]

(4) In the definition of “information memorandum” in subsection (3), the reference to the affairs of the issuer, the person making the offer, the trustee of the business trust or the business trust shall —

- (a) in the case where the issuer, the person making the offer or the trustee of the business trust is a corporation, be construed as including a reference to the matters referred to in section 2 (2);
- (b) in the case where the issuer, the person making the offer or the trustee of the business trust is not a corporation, be construed to refer to such matters as may be prescribed by the Authority; and
- (c) in the case of a business trust, be construed as referring to such matters as may be prescribed by the Authority.

[1/2005]

(5) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units or derivatives of units in a business trust under section 282Y or this section for his own account shall be considered an exempt person even though he does not comply with that requirement.

[1/2005]

(6) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2) (a).

[1/2005]

[SFA, s. 275]

Offer of securities acquired pursuant to section 282Y or 282Z

282ZA.—(1) Notwithstanding sections 282V, 282W, 282X (1) (d) and (e) and (3) (c) and 282ZB, where units or derivatives of units in a business trust initially acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z are sold within the period of 6 months from the date of the initial acquisition to any person other than —

- (a) an institutional investor;
 - (b) a relevant person as defined in section 282Z (3); or
 - (c) any person pursuant to an offer referred to in section 282Z (2),
- then Subdivision (2) of this Division shall apply to the offer resulting in that sale.

[1/2005]

(2) Where units or derivatives of units in a business trust initially acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z are sold to —

- (a) an institutional investor;
- (b) a relevant person as defined in section 282Z (3); or
- (c) any person pursuant to an offer referred to in section 282Z (2),

Subdivision (2) of this Division shall not apply to the offer resulting in that sale.

[1/2005]

(3) Securities of a corporation (other than a corporation that is an accredited investor) —

- (a) the sole business of which is to hold investments; and
- (b) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any units or derivatives of units in a business trust pursuant to an offer made in reliance on an exemption under section 282Z unless —

- (i) that transfer —
 - (A) is made only to institutional investors or relevant persons as defined in section 282Z (3); or
 - (B) arises from an offer referred to in section 282Z (2);
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

[1/2005]

(4) Where —

- (a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and
- (b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust shall not be transferred within 6 months after units or derivatives of units in a business trust are acquired for the trust pursuant to an offer made in reliance on an exemption under section 282Z unless —

- (i) that transfer —
 - (A) is made only to institutional investors or relevant persons as defined in section 282Z (3); or

(B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

[1/2005]

(5) For the avoidance of doubt, the reference to beneficiaries in subsection (4) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

[1/2005]

(6) For the avoidance of doubt, where any units or derivatives of units in a business trust are acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z, an offer to sell those units or derivatives of units may be made in reliance on an exemption under section 282X (1) (d) or (e) after 6 months have elapsed from the date of the first-mentioned offer.

[1/2005]

Offer made using offer information statement

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

(a) in the case where derivatives of units in a business trust are being issued by the trustee-manager in its capacity as trustee-manager of the business trust, the units are those of that business trust;

(b) an offer information statement relating to the offer which complies with such form and content requirements as may be prescribed by the Authority is lodged with the Authority; and

- (c) the offer is made in or accompanied by the offer information statement referred to in paragraph (b).

[1/2005]

(2) Subsection (1) shall apply to an offer of units or derivatives of units in a business trust referred to therein only for a period of 6 months from the date of lodgment of the offer information statement relating to that offer.

[1/2005]

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

[1/2005]

(4) Sections 282I, 282J, 282N, 282O and 282P shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

[1/2005]

(5) For the purposes of subsection (4) —

- (a) a reference in section 282I or 282J to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and
- (b) a reference in section 282N or 282O to any information or new circumstance required to be included in a prospectus under section 282F shall be read as a reference to any information prescribed under subsection (1) (b).

[1/2005]

(6) Where the written consent of an expert is required to be given under section 282I (as applied in relation to an offer information statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

[1/2005]

(7) Where the written consent of an issue manager or underwriter is required to be given under section 282J (as applied in relation to that statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

[1/2005]

Making offer using automated teller machine or electronic means

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

- (a) any automated teller machine; or
- (b) such other electronic means as may be prescribed by the Authority,

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

[1/2005]

(2) For the avoidance of doubt, a prospectus which complies with all other requirements of section 282C (1) (b) (i) or, where applicable, a profile statement which complies with all other requirements of section 282C (4) must still be prepared and issued in respect of any offer referred to in subsection (1).

[1/2005]

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase units or derivatives of units in a business trust.

[1/2005]

Revocation of exemption

282ZD.—(1) Where the Authority considers that a person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section 282X (7), or that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

[1/2005]

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the

Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

[1/2005]

(3) A revocation made under this section shall be final and conclusive and there shall be no appeal therefrom.

[1/2005]

[SFA, s. 281]

Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act

282ZE. For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[1/2005]

[SFA, s. 282]

Subdivision (4) — Debentures

Applicability of provisions relating to prospectus requirements

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

[1/2005]

Division 2 — Collective Investment Schemes

Subdivision (1) — Interpretation

Interpretation of this Division

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

“chief executive officer”, in relation to a corporation, means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;

“control”, in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

- (a) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and
- (b) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, units in a collective investment scheme to be issued or sold and which contains the information required to be included in a prospectus as may be prescribed under section 296 (1) (a) (i), except for such information as may be prescribed by the Authority;

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

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

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

“recognised securities exchange” means a corporation which has been declared by the Authority, by order published in the

Gazette, to be a recognised securities exchange for the purposes of this Division;

“related party” means —

(a) in relation to an entity —

- (i) a director or an equivalent person of the entity;
- (ii) the chief executive officer or an equivalent person of the entity;
- (iii) a person who controls the entity;
- (iv) a related corporation;
- (v) any other entity controlled by it;
- (vi) any other entity controlled by the person referred to in sub-paragraph (iii); and
- (vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and

(b) in relation to an individual —

- (i) his immediate family;
- (ii) a trustee of any trust of which the individual or any member of the individual’s immediate family is —
 - (A) a beneficiary; or
 - (B) where the trust is a discretionary trust, a discretionary object,when the trustee acts in that capacity; and
- (iii) any corporation in which he and his immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 298 (1), as the case may be;

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 298 (1), as the case may be;

“unit trust” means a collective investment scheme under which the property is held on trust for the participants.

[16/2003; 1/2005]

(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

[1/2005]

(3) For the purposes of this Division, a person makes an offer of units in a collective investment scheme if, and only if, as principal —

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

[1/2005]

(4) In subsection (3), “sale” includes any disposal for valuable consideration.

[1/2005]

[Companies, s. 4]

Use of term “real estate investment trust”

283A.—(1) No person shall, when describing or referring to any arrangement the rights or interests of which are, will be or have been the subject of an offer or intended offer, use the term “real estate investment trust” or any of its derivatives in any language in the name or description or any representation of that arrangement, unless —

- (a) the arrangement is authorised under section 286 or is one for which an application for authorisation has been made and has not been refused by the Authority under that section;
- (b) the arrangement is recognised under section 287 or is one for which an application for recognition has been made and has not been refused by the Authority under that section; or
- (c) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a class of

persons declared by the Authority by order published in the *Gazette* as persons who may use such term or derivative.

[31/2004; 1/2005]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[31/2004]

(3) For the avoidance of doubt, in subsection (1) —

(a) “offer” or “intended offer”, in relation to any rights or interests in an arrangement, includes an offer or intended offer in relation to any such rights or interests that have previously been issued; and

(b) “representation”, in relation to an arrangement, includes a representation of the arrangement in any bill head, letter paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

[31/2004; 1/2005]

Code on Collective Investment Schemes

284.—(1) For the more effective administration, supervision and control of collective investment schemes, the Authority shall, under section 321, issue a code, to be known as the Code on Collective Investment Schemes.

(2) The Authority may from time to time revise the Code on Collective Investment Schemes by deleting, amending or adding to the provisions thereof.

(3) The Code on Collective Investment Schemes shall be deemed not to be subsidiary legislation.

[HK CUTMF]

Authority may disapply this Division to certain offers and invitations

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

(a) an offer of units in a collective investment scheme is one to which (but for this section) both this Division and Division 1 apply; and

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

then this Division does not apply to that offer.

[16/2003; 1/2005]

Division not to apply to certain collective investment schemes which are business trusts

284B. This Division does not apply to an offer of units in a collective investment scheme, where —

- (a) the collective investment scheme is also a registered business trust; or
- (b) the collective investment scheme is also a business trust and the offer is made in reliance on an exemption under Subdivision (3) of Division 1A.

[1/2005]

Subdivision (2) — Authorisation and recognition

Offers of units in collective investment schemes

285.—(1) No person shall make an offer of units in a collective investment scheme if the collective investment scheme has not been authorised under section 286 or recognised under section 287.

[1/2005]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[UK FSMA 2000, s. 238]

Authorised schemes

286.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3), authorise a collective investment scheme constituted in Singapore.

(2) The Authority may authorise, under subsection (1), a collective investment scheme which is constituted as a unit trust if and only if the Authority is satisfied that —

- (a) there is a manager for the scheme which satisfies the requirements in subsection (3);
- (b) there is a trustee for the scheme approved under section 289;
- (c) there is a trust deed in respect of the scheme entered into by the manager and the trustee for the scheme that complies with prescribed requirements; and
- (d) the scheme, the manager for the scheme and the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes.

(3) It shall be a condition for the authorisation of a collective investment scheme under subsection (1) that —

- (a) the manager for the scheme is —
 - (i) the holder of a capital markets services licence for fund management or a person exempted under section 99 (1) (a), (b), (c) or (d) in respect of fund management; or
 - (ii) a public company which does not carry on business in fund management or is specified in the Third Schedule or is exempted under section 99 (1) (f), (g) or (h) in respect of fund management; and
- (b) the manager for the scheme is a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —
 - (i) any person who is or will be employed by or associated with the manager;
 - (ii) any person exercising influence over the manager; or
 - (iii) any person exercising influence over a related corporation of the manager.

[16/2003]

(4) The Authority may authorise, under subsection (1), a collective investment scheme which is not constituted as a unit trust if and only if the Authority is satisfied that the scheme and the manager for the scheme comply with such requirements as may be prescribed.

(5) The Authority may refuse to authorise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(6) The Authority shall not refuse to authorise a collective investment scheme 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 authorise the collective investment scheme on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme 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 responsible person or the collective investment scheme.

[16/2003; 1/2005]

(7) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority has refused to authorise that scheme under subsection (1), appeal to the Minister whose decision shall be final.

[1/2005]

(8) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(9) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme authorised under subsection (1).

(10) The responsible person for a collective investment scheme authorised under subsection (1) and the approved trustee for the scheme, to the extent applicable, shall ensure that the conditions and requirements set out in subsections (2), (3) and (4) as applicable to that scheme shall continue to be satisfied.

(11) Notwithstanding subsection (10), a failure by any person to comply with the Code on Collective Investment Schemes shall not of itself render that person liable to criminal proceedings but such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(12) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may, in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(13) The responsible person for a collective investment scheme which is authorised under subsection (1) shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(14) Where the manager for a collective investment scheme which is constituted as a unit trust and authorised under subsection (1) fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(15) Any person who contravenes subsection (10) or (13) 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.

[UK FSMA 2000, s. 242, s. 243, s. 244, s. 245, s. 247 and s. 248; HK SF Bill, Clause 103]

Recognised schemes

287.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3), recognise a collective investment scheme constituted outside Singapore.

(2) The Authority may recognise a collective investment scheme under subsection (1) if and only if the Authority is satisfied that —

- (a) the laws and practices of the jurisdictions under which the scheme is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under this Division in the case of comparable authorised schemes;
- (b) *(Deleted by Act 1/2005)*
- (c) there is a manager for the scheme which satisfies the requirements in subsection (3);
- (d) there is a representative for the scheme for the functions set out in subsection (13) who is —
 - (i) an individual resident in Singapore; or

- (ii) a company, or a foreign company registered under Division 2 of Part XI of the Companies Act (Cap. 50);
- (e) the Authority has been furnished with information regarding —
 - (i) the name of the representative referred to in paragraph (d) and his address (where such representative is a corporation) or contact particulars (where such representative is an individual); and
 - (ii) such other information as the Authority may prescribe; and
- (f) the scheme, the manager for the scheme and the trustee for the scheme, where applicable, comply with this Act and the Code on Collective Investment Schemes.

[1/2005]

(3) It shall be a condition for the recognition of a collective investment scheme under subsection (1) that the manager for the scheme is —

- (a) licensed or regulated in the jurisdiction of its principal place of business; and
- (b) a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —
 - (i) any person who is or will be employed by or associated with the manager;
 - (ii) any person exercising influence over the manager; or
 - (iii) any person exercising influence over a related corporation of the manager.

[16/2003; 1/2005]

(4) The Authority may refuse to recognise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to recognise a collective investment scheme 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 collective investment scheme on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme 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 responsible person or the collective investment scheme.

[16/2003; 1/2005]

(6) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority has refused to recognise that scheme under subsection (1), appeal to the Minister whose decision shall be final.

[1/2005]

(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 collective investment scheme recognised under subsection (1).

(9) The responsible person for a collective investment scheme recognised under subsection (1) shall ensure that the conditions and requirements set out in subsections (2) and (3), as applicable to that scheme, shall continue to be satisfied.

(10) Notwithstanding subsection (9), a failure by any person to comply with the Code on Collective Investment Schemes shall not of itself render that person liable to criminal proceedings but may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(11) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(12) The responsible person for a collective investment scheme which is recognised under subsection (1) shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(13) The representative for a collective investment scheme which is recognised under subsection (1) shall carry out, or procure the carrying out of the following functions:

(a) facilitate —

- (i) the issuing and redeeming of units in the scheme;
- (ii) the publishing of sale and purchase prices of units in the scheme;
- (iii) the sending of reports of the scheme to participants;
- (iv) the furnishing of such books relating to the sale and redemption of units as the Authority may require; and
- (v) the inspection of the instruments constituting the scheme;

(b) either maintain for inspection in Singapore a subsidiary register of participants who subscribed for or purchased their units in Singapore, or maintain in Singapore any facility that enables the inspection or extraction of the equivalent information;

(c) within 14 days after any change in the particulars referred to in subsection (2) (e), give notice in writing of such change to the Authority;

(d) furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act; and

(e) such other functions as the Authority may prescribe.

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

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

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

(c) for the purposes of subsection (13) (a) (v), if the instruments constituting the scheme are not in the language of the prospectus, an accurate translation of the instruments in the

language of the prospectus is made available to a participant for inspection, unless the participant has consented to the making available to him for inspection of the instruments in a language other than the language of the prospectus; and

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

[16/2003]

(13B) In subsection (13A), “language of the prospectus” means the language of the prospectus accompanying or making the offer of units in the collective investment scheme.

[16/2003; 1/2005]

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

[16/2003]

(14) Any person who contravenes subsection (9), (12) or (13) 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.

[UK FSMA 2000, s. 272, s. 273, s. 274, s. 275 and s. 276; ASIC Policy Statement 65 (modified)]

Revocation, suspension or withdrawal of authorisation or recognition

288.—(1) The Authority may revoke the authorisation of a collective investment scheme granted under section 286 or the recognition of a collective investment scheme granted under section 287 if —

- (a) the application for authorisation or 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 authorisation or recognition;

- (aa) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be against the public interest;
- (b) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be prejudicial to its participants or potential participants; or
- (c) in the case of —
 - (i) a scheme authorised under section 286, the responsible person for the scheme or the trustee for the scheme, where applicable, fails to comply with section 286 (10) or (13); or
 - (ii) a scheme recognised under section 287, the responsible person for the scheme or the representative for the scheme, where applicable, fails to comply with section 287 (9), (12) or (13).

[16/2003]

(2) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1), the Authority may issue such directions as it deems fit to the responsible person for the scheme, including a direction that he —

- (a) refund all moneys contributed by the participants of the scheme; or
- (b) provide the participants with an option, on such terms as the Authority may approve, to obtain from him a refund of all moneys contributed by them or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider whether the responsible person for the collective investment scheme is able to liquidate the property of the scheme without material adverse financial effect to the participants, and for this purpose, the factors which the Authority may take into account include —

- (a) whether a significant amount of the moneys contributed by the participants has been invested;
- (b) the liquidity of the property of the scheme; and
- (c) the penalties, if any, payable for liquidating the property.

(4) A responsible person who contravenes any of the directions issued by the Authority to him under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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) Notwithstanding subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the authorisation or recognition of a collective investment scheme, suspend the authorisation or recognition of that scheme for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1) or suspends the authorisation or recognition of a collective investment scheme under subsection (5), it shall notify the responsible person for the scheme.

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the responsible person for a collective investment scheme, in such form and manner as may be prescribed, withdraw the authorisation or recognition of that scheme.

(8) The Authority may refuse to withdraw the authorisation or recognition of a collective investment scheme under subsection (7) where the Authority is of the opinion that —

- (a) there is any matter concerning the scheme which should be investigated before the authorisation or recognition is withdrawn; or
- (b) the withdrawal of the authorisation or recognition would not be in the public interest.

(8A) The Authority shall not —

- (a) revoke the authorisation or recognition of a collective investment scheme under subsection (1);
- (b) suspend the authorisation or recognition of a collective investment scheme under subsection (5); or
- (c) refuse the withdrawal of the authorisation or recognition of a collective investment scheme under subsection (8),

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

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

- (i) the person making the offer (being an entity), the responsible person or the collective investment scheme 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;
- (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 responsible person or the collective investment scheme.

[16/2003; 1/2005]

(8B) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority —

- (a) has revoked the authorisation or recognition, as the case may be, of that scheme under subsection (1);
- (b) has suspended the authorisation or recognition, as the case may be, of that scheme under subsection (5); or
- (c) has refused to withdraw the authorisation or recognition, as the case may be, of that scheme under subsection (8),

appeal to the Minister whose decision shall be final.

[1/2005]

(9) Where the Authority revokes an authorisation or recognition under subsection (1), suspends an authorisation or recognition under subsection (5) or withdraws an authorisation or recognition under subsection (7), it may —

- (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.

[UK FSMA 2000, s. 254, s. 255 and s. 256; HK SF Bill, Clause 105]

Approval of trustees

289.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed, approve a public company to

act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts (referred to in this Subdivision as an approved trustee).

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

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

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

- (a) has failed to satisfy a financial requirement or other criterion prescribed under subsection (2);
- (b) has not carried out its duties with due care and diligence;
- (c) has acted in a manner which prejudices the participants of any authorised collective investment scheme; or
- (d) has failed to comply with this Act or the Code on Collective Investment Schemes,

the Authority may —

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

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

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

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

Inspection of approved trustees

290.—(1) The Authority may, from time to time, inspect the books of an approved trustee.

(2) For the purpose of an inspection under this section, the approved trustee under inspection shall afford the Authority access to, and shall produce, its books and shall give such information and facilities as may be required to conduct the inspection.

(3) The Authority shall have the power to copy or take possession of the books of an approved trustee under inspection.

(4) An approved trustee which fails, without reasonable excuse, to produce any book or furnish any information or facilities in accordance with subsection (2), or otherwise obstructs the Authority in the exercise of its powers under this section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[SIA, s. 12]

Duty of trustees to furnish Authority with such return and information as Authority requires

291. An approved trustee shall furnish such returns and provide such information relating to its business as the Authority may require.

[SIA, s. 67]

Liability of trustees

292.—(1) Subject to subsection (2), any provision in a trust deed required under section 286 (2) (c) or in any contract with the participants of a collective investment scheme to which such a trust deed relates, shall be void in so far as it would have the effect of exempting a trustee under the trust deed from, or indemnifying a trustee against, liability for breach of trust where the trustee fails to exercise the degree of care and diligence required of a trustee.

(2) Subsection (1) shall not invalidate —

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) any provision enabling such a release to be given —

(i) on the agreement thereto of a majority of not less than three-fourths of the participants in a collective

investment scheme voting in person or by proxy at a meeting summoned for the purpose; and

- (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

[Companies, s. 120]

Authority may issue directions

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

- (a) where a collective investment scheme is constituted as a corporation, the corporation;
- (b) the manager, trustee, or representative for a collective investment scheme; or
- (c) any class of such persons referred to in paragraph (a) or (b).

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

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

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

[SIA, s. 21]

Service

294.—(1) Where a collective investment scheme —

- (a) is authorised under section 286, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme at his last known address; or
- (b) is recognised under section 287, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme or the representative for the scheme at his last known address.

(1A) For the avoidance of doubt, a reference in subsection (1) to service of any document relating to the scheme shall include the service of any process in relation to the scheme.

[1/2005]

(2) Any notice or direction to be given or served by the Authority on a corporation (where a collective investment scheme is constituted as a corporation), the manager for a collective investment scheme, the trustee for a collective investment scheme or the representative for a collective investment scheme shall for all purposes be regarded as duly given or served if it has been delivered or sent by post or facsimile transmission to such person at his last known address.

(3) In the case of a corporation, the last known address referred to in subsections (1) and (2) shall be —

- (a) if it is a company incorporated in Singapore, the address of its registered office in Singapore; or
- (b) if it is a foreign company, the address of its registered office in Singapore or the registered address of its agent or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

[Companies, s. 376]

Winding up

295.—(1) Where a collective investment scheme is to be wound up, whether under this section or otherwise, the responsible person for the scheme shall give notice in writing of the proposed winding up to the Authority at least 7 days before the winding up.

(2) Where the Authority revokes or withdraws the authorisation of a collective investment scheme under section 288, the responsible person and, where applicable, the trustee shall take the necessary steps to wind up the scheme.

(3) Where —

- (a) the responsible person for a collective investment scheme authorised under section 286 is in liquidation; or
- (b) in the opinion of the trustee for a collective investment scheme authorised under section 286 which is constituted as a unit trust, the responsible person for the scheme has ceased to carry on business or has, to the prejudice of the participants of the scheme, failed to comply with any provision of the trust deed in respect of the scheme,

the trustee shall summon a meeting of the participants for the purpose of determining an appropriate course of action.

(4) A meeting under subsection (3) shall be summoned —

- (a) by giving notice in writing of the proposed meeting at least 21 days before the proposed meeting to each participant at his last known address or, in the case of joint participants, to the participant whose name stands first in the records of the responsible person for the scheme; and
- (b) by publishing, at least 21 days before the proposed meeting, an advertisement giving notice of the meeting in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(5) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the participants present and voting either in person or by proxy at the meeting that the scheme to which the trust deed relates be wound up, the responsible person for the scheme and, where applicable, the trustee shall take the necessary steps to wind up the scheme.

(6) Any responsible person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(7) Any responsible person or, where applicable, trustee who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) Any trustee who contravenes subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[Companies, s. 118]

Subdivision (3) — Prospectus requirements

Requirement for prospectus and profile statement, where relevant

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

- (a) is made in or accompanied by a prospectus in respect of the offer —
 - (i) that is prepared in accordance with such requirements as may be prescribed by the Authority;

- (ii) a copy of which, being one that has been signed in accordance with subsection (2A), is lodged with the Authority; and
 - (iii) that is registered by the Authority; and
- (b) complies with such requirements as may be prescribed by the Authority.

[1/2005]

(1A) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

[1/2005]

(1B) A preliminary document referred to in subsection (1A) shall contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

[1/2005]

(2) Notwithstanding subsection (1), an offer of units in a collective investment scheme may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this Subdivision as a profile statement), instead of a prospectus, if —

- (a) a prospectus is prepared in accordance with such requirements as may be prescribed under subsection (1) (a) (i) and the profile statement is prepared in accordance with such requirements as may be prescribed;
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (2A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer complies with such other requirements as may be prescribed.

[1/2005]

(2A) The copy of a prospectus or profile statement lodged with the Authority shall be signed —

- (a) where the person making the offer of units in a collective investment scheme is the responsible person for the scheme,

by every director or equivalent person of the responsible person and every person who is named therein as a proposed director or an equivalent person of the responsible person; and

(b) where the person making the offer of units in a collective investment scheme is not the responsible person for the scheme —

(i) where the responsible person is controlled by —

(A) the person making the offer;

(B) one or more of the related parties of the person making the offer; or

(C) the person making the offer and one or more of his related parties,

by the persons referred to in paragraph (a) and the persons referred to in sub-paragraph (ii) (A) or (B), as the case may be; and

(ii) in any other case —

(A) where that person is an entity, by every director or equivalent person of that entity; or

(B) where that person is an individual, by the individual or a person authorised by him in writing.

[1/2005]

(2B) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(a) by that director or equivalent person; or

(b) by a person who is authorised in writing by that director or equivalent person to sign on his behalf.

[1/2005]

(2C) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(a) by that proposed director or equivalent person; or

(b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his behalf.

[1/2005]

(3) No person shall make an offer of units in a collective investment scheme if that scheme has not been formed or does not exist.

[1/2005]

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

(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 \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(6) The Authority may register a prospectus or a profile statement on any day between the 14th and 21st days (both days inclusive) from the date of lodgment thereof with the Authority, unless —

- (a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (12);
- (b) the Authority gives a notice to the person making the offer of an extension, in which case, the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (12);
- (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, in which case the Authority may, at any time up to and including the date on which the extended period ends —
 - (i) register the prospectus or profile statement; or
 - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (12); or
- (d) the person making the offer gives a notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

[1/2005]

(6A) Where, after a notice of an opportunity to be heard has been given under subsection (6) (a), (b) (ii) or (c) (ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such

date as it considers appropriate, except that that date shall not be earlier than the 14th day from the date of lodgment of the prospectus or profile statement with the Authority.

[1/2005]

(6B) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (2A) and which contains the information required to be included in a prospectus as prescribed under subsection (1) (a) (i), including such information which could be omitted from the preliminary document by virtue of subsection (1B), has been lodged with the Authority.

[1/2005]

(6C) A person making an offer of units in a collective investment scheme may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

[1/2005]

(7) Subject to subsection (8) —

- (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged; and
- (b) where any amendment to a profile statement is lodged, the profile statement shall be deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged.

[16/2003; 1/2005]

(8) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended shall be deemed, for the purposes of subsection (6), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

[1/2005]

(8A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

[16/2003]

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

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

(b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A (1), and for the purposes of this subsection, the person making the offer shall provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

[16/2003; 1/2005]

(10) The Authority shall refuse to register a prospectus if —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under subsection (1) (a);
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
- (d) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (2A);
- (e) any written consent of an expert to the issue of the prospectus required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (ea) any written consent of an issue manager to the issue of the prospectus required under section 249A (1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (eb) any written consent of an underwriter to the issue of the prospectus required under section 249A (2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

[1/2005]

(11) The Authority shall refuse to register a profile statement if —

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;

- (b) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under subsection (2) (a);
- (c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (2A);
- (ca) any written consent of an expert to the issue of the profile statement required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (cb) any written consent of an issue manager to the issue of the profile statement required under section 249A (1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (cc) any written consent of an underwriter to the issue of the profile statement required under section 249A (2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (d) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
- (e) the prospectus has not been registered by the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

[1/2005]

(12) The Authority shall not refuse to register a prospectus under subsection (10) or a profile statement under subsection (11) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme 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 responsible person or the collective investment scheme.

[1/2005]

(13) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (10) or (11), appeal to the Minister whose decision shall be final.

[1/2005]

(14) If —

- (a) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or
- (b) an application to subscribe for or purchase units in a collective investment scheme is accepted, or units in a collective investment scheme are issued or sold, before a prospectus and, where applicable, profile statement, in respect of the units has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

- (i) the issue, circulation or distribution of the prospectus or profile statement;
- (ii) the acceptance of the application to subscribe for or purchase the units; or
- (iii) the issue or sale of the units,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(14A) For the purposes of subsections (10) (a) and (11) (a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

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

[Companies, s. 43; Aust. Corporations 2001, s. 721]

Stop order for prospectus and profile statement

297.—(1) If a prospectus has been registered and —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under section 296;
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

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

[16/2003; 1/2005]

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

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

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

[16/2003; 1/2005]

(2A) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the units in a collective investment scheme to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on a securities exchange and trading in them has commenced.

[1/2005]

(3) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme 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 responsible person or the collective investment scheme.

[16/2003; 1/2005]

(4) Where applications for units in a collective investment scheme have been made prior to the service of a stop order, and —

- (a) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —
 - (i) where units in the scheme have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled; or
 - (ii) where units in the scheme have been issued to the applicants, the issue of the units shall be deemed to be void,

and the person making the offer of units in the scheme shall, within 7 days from the date of the stop order, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to that person, its agent, or any person through whom the applicant has applied for the units; or

- (b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by notice in writing issue such directions to the person making the offer of units in the scheme as it deems fit, including a direction that the person provide the applicants with an option, on such terms as the Authority may approve,

to obtain from that person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

[1/2005]

(5) In determining whether to issue a direction under subsection (4) to the person making the offer of units in the collective investment scheme to refund the contributions of the applicants, the Authority shall consider whether the responsible person for the scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

- (a) whether a significant amount of the contributions of the participants has been invested;
- (b) the liquidity of the property of the scheme; and
- (c) the penalties, if any, payable for liquidating the property.

[1/2005]

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

(7) If the Authority is of the opinion that any delay in serving a stop order pending the hearing required under subsection (3) is not in the interests of the public, the Authority may, without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, serve an interim stop order on such person directing that no or no further units in a collective investment scheme to which the prospectus or profile statement relates be issued or sold.

[1/2005]

(8) An interim stop order shall, unless revoked, be in force —

(a) in a case where —

- (i) it is served during a hearing under subsection (3); or
- (ii) a hearing under subsection (3) is commenced while it is in force,

until the Authority makes an order under subsection (1) or (2); or

(b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(9) Subsection (4) shall not apply where only an interim stop order has been served.

(10) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) Any person who contravenes subsection (4), or any direction issued to him under that subsection, 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.

[1/2005]

(12) For the purposes of subsections (1) (a) and (2) (a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Aust. Corporations 2001, s. 739]

Lodging supplementary document or replacement document

298.—(1) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the date of registration of the prospectus by the Authority, whichever is earlier, the person making that offer becomes aware of —

- (a) a false or misleading statement in the prospectus or profile statement;
- (b) an omission from the prospectus or profile statement of any information that should have been included in it by requirements prescribed under section 296; or
- (c) a new circumstance that —
 - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
 - (ii) would have been required under this Act to be included in the prospectus or profile statement, if it had arisen before the prospectus or the profile statement, as the case may be, was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

[1/2005]

(2) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the registration of the prospectus by the Authority, whichever is earlier, the person making that offer wishes to update any information in a prospectus or profile statement and he declares in writing to the Authority that none of the situations set out in subsection (1) apply at that time, the person may lodge a supplementary or replacement document with the Authority.

[1/2005]

(3) At the beginning of a supplementary document, there shall be —

- (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
- (b) an identification of the prospectus or profile statement it supplements;
- (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and
- (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.

[1/2005]

(4) At the beginning of a replacement document, there shall be —

- (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
- (b) an identification of the prospectus or profile statement it replaces.

(5) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(6) The person making the offer of units in a collective investment scheme shall take reasonable steps —

- (a) to inform potential investors of the lodgment of any supplementary document or replacement document under subsection (1); and
- (b) to make available to them the supplementary document or replacement document.

[1/2005]

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

- (a) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and
- (b) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

[1/2005]

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

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

- (a) where the replacement document is a replacement prospectus, the prospectus in relation to the offer shall be taken to be the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement in relation to the offer shall be taken to be the replacement profile statement.

[1/2005]

(10) Where, prior to the lodgment of the supplementary document or replacement document under subsection (1), applications have been made under the original prospectus or profile statement for units in a collective investment scheme, the person making the offer of units in the scheme —

(a) shall —

- (i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants notice in writing on how to obtain,

or arrange to receive, a copy of the supplementary document or replacement document, as the case may be; and

- (ii) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document, as the case may be, to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document; or

- (b) shall, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be.

[1/2005]

(11) Any person who contravenes subsection (3), (4), (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(12) Any person who contravenes subsection (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.

(13) For the purposes of subsection (1) (a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Companies, s. 50A; Aust Corporations 2001, s. 719]

Duration of validity of prospectus and profile statement

299.—(1) No person shall make an offer of units in a collective investment scheme, or issue or sell any units in a collective investment scheme, on the basis of a prospectus or profile statement after the expiration of 12 months from the date of registration by the Authority of the prospectus in relation to such offer, issue or sale.

[1/2005]

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

[1/2005]

(3) An issue or a sale of units in a collective investment scheme that is made in contravention of subsection (1) shall not, by reason only of that fact, be voidable or void.

[1/2005]

[Companies, s. 113A]

Restrictions on advertisements, etc.

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

(a) advertise the offer or intended offer; or

(b) publish a statement that —

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

(ii) is reasonably likely to induce people to subscribe for or purchase the units,

unless the advertisement or publication is authorised by this section.

[16/2003; 1/2005]

(2) In determining whether a statement —

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

(b) is reasonably likely to induce people to subscribe for or purchase units in a collective investment scheme,

regard shall be had to whether the statement —

(i) forms part of the normal advertising of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and

(ii) is likely to encourage investment decisions to be made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

[1/2005]

(2A) Notwithstanding subsection (3A), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined

in section 305 (5) and persons to whom an offer referred to in section 305 (2) is to be made without contravening subsection (1), if —

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

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.”;
 - (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and
 - (iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the preliminary document to purchase or subscribe for any units in the collective investment scheme to which the preliminary document relates;
- (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of units in the collective investment scheme to which the preliminary document relates, or the acceptance of such an offer by any person; and
- (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

[1/2005]

(2B) Notwithstanding subsection (3A), a person does not contravene subsection (1) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material —

- (a) on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 305 (5) or persons to whom an offer referred to in section 305 (2) is to be made; or
- (b) on matters contained in the prospectus or profile statement which has been lodged with the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme to market the scheme under the Financial Advisers Act (Cap. 110):

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

[1/2005]

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

[1/2005]

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

[1/2005]

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

- (a) a statement that identifies the person making the offer, the responsible person for the collective investment scheme and, where the collective investment scheme is not a corporation, the collective investment scheme;
- (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
- (c) a statement that anyone wishing to acquire the units in the collective investment scheme will need to make an application in the manner set out in the prospectus or profile statement;
- (d) a statement on how to obtain, or arrange to receive, a copy of the prospectus or profile statement; and
- (e) the investment focus of the collective investment scheme.

[1/2005]

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

[1/2005]

(3C) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene

subsection (1) if it complies with such requirements as may be prescribed by the Authority.

[1/2005]

(4) An advertisement or publication does not contravene subsection (1) if it —

- (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or recognised securities exchange, made by any person, provided that the disclosure, notice or report complies with such requirements as may be prescribed by the Authority;
- (aa) consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, provided that the notice or report complies with such requirements as may be prescribed by the Authority, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;
- (b) consists solely of a report about the collective investment scheme or proposed collective investment scheme that is issued pursuant to this Act and the Code on Collective Investment Schemes;
- (ba) consists solely of a statement made by the person making the offer or the responsible person that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;
- (c) is a news report, or a genuine comment, by a person other than a person referred to in paragraph (d) (i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to —
 - (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;
 - (ii) a disclosure, notice or report referred to in paragraph (a);

- (iii) a notice, report, presentation, meeting, proposed meeting, general meeting or proposed general meeting referred to in paragraph (aa); or
 - (iv) a report referred to in paragraph (b);
- (d) is a report about the units in the collective investment scheme which are the subject of the offer or intended offer, published by someone who is not —
 - (i) the person making the offer, the responsible person for the scheme, its agent or distributor;
 - (ii) a director or an equivalent person of the person making the offer or the responsible person for the scheme;
 - (iii) a person who has an interest in the success of the issue or sale of the units; or
 - (iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);
- (e) is a report about the units in the collective investment scheme which are the subject of the offer or intended offer, published and delivered to any institutional investor not later than 14 days prior to the date of lodgment of the prospectus, provided that —
 - (i) the offer is also made or will also be made in one or more other countries;
 - (ii) the publication and delivery of such report in that other country or any one of those other countries do not infringe any law, code or other requirement of that country;
 - (iii) the report and the manner of its publication and delivery in Singapore comply with such other requirements as may be prescribed by the Authority; and
 - (iv) the person issuing the report complies with such requirements as may be prescribed by the Authority; or
- (f) is a publication made by the person making the offer or the responsible person for the scheme solely to correct or provide

clarification on any erroneous or inaccurate information or comment contained in —

- (i) an earlier news report or a genuine comment referred to in paragraph (c); or
- (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (5),

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

[1/2005]

(5) A person does not contravene subsection (1) if —

- (a) he publishes an advertisement or publication in the ordinary course of a business of —
 - (i) publishing a newspaper, periodical or magazine; or
 - (ii) broadcasting by radio, television, or any other means of broadcasting or communication; and
- (b) he did not know, and had no reason to suspect, that its publication would constitute a contravention of subsection (1).

(6) Subsection (4) (c) and (d) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

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

[1/2005]

(8) This section does not affect any liability that a person has under any other law.

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

(10) Any person who contravenes any of the conditions under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(11) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

[1/2005]

(12) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

[Companies, s. 48; Aust. FSR Bill 2001, Clause 1018A]

Issue of units where prospectus indicates application to list on securities exchange

301.—(1) Where a prospectus states or implies that application has been or will be made for permission for the units in a collective investment scheme offered thereby to be listed for quotation on any securities exchange, and —

- (a) the permission is not applied for in the form required by the securities exchange within 3 days from the date of the issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the securities exchange,

then —

- (i) any issue whenever made of units made on an application in pursuance of the prospectus shall be void; and
- (ii) any person who continues to issue such units after the period specified in paragraph (a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

[1/2005]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), applications for units in the collective investment scheme have been made and —

(a) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —

(i) in a case where units in the scheme have not been issued to the applicants, the responsible person for the scheme shall treat such applications as having been withdrawn; or

(ii) in a case where units in the scheme have been issued to the applicants, the issue of the units shall be deemed to be void,

and the responsible person shall within 7 days after the period specified in subsection (1) (a) or (b), whichever is applicable, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units; or

(b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by notice in writing issue such directions to the responsible person for the scheme as it deems fit, including a direction that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2) (b) to the responsible person to refund the contributions of the applicants, the Authority shall consider whether the responsible person for the collective investment scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

(a) whether a significant amount of the contributions of the participants has been invested;

(b) the liquidity of the property of the scheme; and

(c) the penalties, if any, payable for liquidating the property.

(4) Any responsible person who contravenes subsection (2) or any of the directions issued under that subsection 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.

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

(6) For the avoidance of doubt, a direction issued under subsection (2) shall be deemed not to be subsidiary legislation.

(7) All moneys received from applicants as payment for the units, including contributions to the scheme and charges which the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units, shall be kept in a separate bank account so long as the responsible person for the collective investment scheme may become liable to repay it under subsection (2).

[16/2003]

(8) Any responsible person for a scheme which is not in compliance with subsection (7) and, where the scheme is a corporation, every officer thereof, 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.

(9) Where the securities exchange has, within the period specified in subsection (1) (b), granted permission subject to compliance with such requirements as may be specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if —

- (a) in a case where the responsible person for the scheme is a corporation, the directors of the corporation; or
- (b) in a case where the responsible person for the scheme is not a corporation, such persons as may be required by the securities exchange,

have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

(10) Any person who fails to comply with any undertaking given to a securities exchange under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(11) A person shall not issue a prospectus inviting persons to subscribe for or purchase units in a collective investment scheme if it includes —

- (a) a false or misleading statement that permission has been granted for those units to be listed for quotation on, dealt in or quoted on any securities exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation on, dealing in or quoting the units on any securities exchange, or to any requirements of a securities exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the securities exchange within 3 days from the date of issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

[16/2003; 1/2005]

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

(13) Where a prospectus contains a statement to the effect that the constituent documents for the collective investment scheme comply, or have been drawn so as to comply, with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of subsection (11) (b) to be a prospectus that includes a statement that application has been, or will be, made for permission for the units to which the prospectus relates, to be listed for quotation on the securities exchange.

[1/2005]

[Companies, s. 53]

Application of provisions relating to securities

302.—(1) Sections 247, 249, 249A, 252, 253, 254 and 255 shall, with the necessary modifications, apply in relation to an offer of units in a collective investment scheme as they apply in relation to an offer of securities in Division 1 of this Part.

[1/2005]

(2) For the purposes of subsection (1), references in those sections to securities and to a person subscribing for, purchasing or acquiring securities shall be read as references to units in a collective investment scheme and to a person subscribing for, purchasing or acquiring such units, respectively.

[1/2005]

(3) For the purposes of subsection (1), references in sections 253 and 254 to an offer referred to in section 280 shall be read as a reference to an offer referred to in section 305C.

[1/2005]

(4) For the purposes of subsection (1), references in sections 249, 249A, 253 and 254 to the issuer shall be read as a reference to the responsible person.

[1/2005]

[Companies, s. 113 (1)]

Subdivision (4) — Exemptions**Issue or transfer for no consideration**

302A.—(1) Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (other than an offer of an option to subscribe for or purchase such units) if no consideration is or will be given for the issue or transfer of the units.

[1/2005]

(2) Subdivisions (2) and (3) of this Division shall not apply to an offer of an option to subscribe for or purchase units in a collective investment scheme if —

- (a) no consideration is or will be given for the issue or transfer of the option; and
- (b) no consideration is or will be given for the underlying units on the exercise of the option.

[1/2005]

Small offers

302B.—(1) Subdivisions (2) and (3) of this Division shall not apply to personal offers of units in a collective investment scheme by a person if —

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed —
 - (i) \$5 million (or its equivalent in a foreign currency); or
 - (ii) such other amount as may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);
- (b) in respect of each offer, the person making the offer gives the person to whom he makes the offer —
 - (i) the following statement in writing:

“This offer is made in reliance on the exemption under section 302B (1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority.”; and
 - (ii) a notification in writing that the units to which the offer (referred to in this sub-paragraph as the initial offer) relates shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —
 - (A) in compliance with Subdivisions (2) and (3) of this Division;
 - (B) in reliance on subsection (8) (c) or any other exemption under any provision of this Subdivision (other than this subsection); or
 - (C) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under this subsection;
- (c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred

for administrative or professional services, or by way of commission or fee for services rendered by any of the following persons:

- (i) the holder of a capital markets services licence to deal in securities;
- (ii) an exempt person in respect of dealing in securities;
- (iii) a person licensed under the Financial Advisers Act (Cap. 110) in respect of marketing of collective investment schemes;
- (iv) an exempt financial adviser as defined in section 2 (1) of the Financial Advisers Act; or
- (v) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in securities or marketing of collective investment schemes, or who is exempted therefrom in respect of such dealing or marketing.

[1/2005]

(2) For the purposes of subsection (1) (b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

[1/2005]

(3) For the purposes of subsection (1), a personal offer of units in a collective investment scheme is one that —

- (a) may only be accepted by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in that offer, having regard to —
 - (i) any previous contact before the date of the offer between the person making the offer and that person;
 - (ii) any previous professional or other connection established before that date between the person making the offer and that person; or
 - (iii) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the offer or any of the

persons specified in subsection (1) (d) (i) to (v) that he is interested in offers of that kind.

[1/2005]

(4) In determining the amount raised by an offer of units in a collective investment scheme, the following shall be included:

- (a) the amount payable for the units at the time when they are issued or sold;
- (b) if the units are issued partly-paid, any amount payable at a future time if a call is made; and
- (c) if the units carry a right (by whatever name called) to be converted into other units or to acquire other units in a collective investment scheme, any amount payable on the exercise of the right to convert them into, or to acquire, other units in a collective investment scheme.

[1/2005]

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1) (a), each amount raised —

- (a) by that person from any offer of units in the same collective investment scheme; or
- (b) by that person or another person from any offer of securities which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), section 272A (1) or 282V (1) shall be included.

[1/2005]

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(7) For the purpose of this section, an offer of units in a collective investment scheme made by a person acting as an agent of another person shall be treated as an offer made by that other person.

[1/2005]

(8) Where units acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the units to another person, Subdivisions (2) and (3) of this Division shall apply to the offer from the first-mentioned person to the second-mentioned person which resulted in that sale, unless —

- (a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);

- (b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units were acquired under the initial offer; or
- (c) such offer is one —
 - (i) that may be accepted only by the person to whom it is made;
 - (ii) that is made to a person who is likely to be interested in the offer having regard to —
 - (A) any previous contact before the date of the offer between the person making the initial offer and that person;
 - (B) any previous professional or other connection established before that date between the person making the initial offer and that person; or
 - (C) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the initial offer or any of the persons specified in subsection (1) (d) (i) to (v) that he is interested in offers of that kind;
 - (iii) in respect of which the first-mentioned person has given the second-mentioned person —
 - (A) the following statement in writing:

“This offer is made in reliance on the exemption under section 302B (8) (c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority.”; and
 - (B) a notification in writing that the units being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —
 - (BA) in compliance with Subdivisions (2) and (3) of this Division;

- (BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or
- (BC) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under subsection (1);
- (iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in subsection (1) (d) (i) to (v).

[1/2005]

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8) (c) (iii).

[1/2005]

(10) In subsections (1) (c) and (8) (c) (iv), “advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message, that is published in connection with an offer of units in a collective investment scheme, but does not include —
 - (i) a document —
 - (A) purporting to describe the units in a collective investment scheme being offered; and
 - (B) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units being offered;
 - (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other

requirements of a securities exchange, futures exchange or recognised securities exchange, which is made by any person; or

- (iii) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting.

[1/2005]

Private placement

302C.—(1) Subdivisions (2) and (3) of this Division shall not apply to offers of units in a collective investment scheme that are made by a person if —

- (a) the offers are made to no more than 50 persons within any period of 12 months;
- (b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B (1) (d) (i) to (v).

[1/2005]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1) (a).

[1/2005]

(3) In determining whether offers of units in a collective investment scheme by a person are made to no more than the applicable number of persons specified in subsection (1) (a) within a period of 12 months, each person to whom —

- (a) an offer of units in the same collective investment scheme is made by the first-mentioned person; or
- (b) an offer of securities is made by the first-mentioned person or another person where such offer is a closely related offer,

if any, within that period in reliance on the exemption under this section, section 272B or 282W shall be included.

[1/2005]

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(5) For the purposes of subsection (1) —

- (a) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units which are the subject of the offer;
- (b) an offer of units in a collective investment scheme to an entity or to a trustee shall be treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust, as the case may be, if the entity or trust is formed primarily for the purpose of acquiring the units which are the subject of the offer;
- (c) an offer of units in a collective investment scheme to 2 or more persons who will own the units acquired as joint owners shall be treated as an offer to a single person;
- (d) an offer of units in a collective investment scheme to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;
- (e) offers of units in a collective investment scheme made by a person as an agent of another person shall be treated as offers made by that other person;
- (f) where an offer of units in a collective investment scheme is made to a person with a view to another person acquiring an interest in those units by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1) (a); and
- (g) where —
 - (i) an offer of units in a collective investment scheme is made to a person in reliance on the exemption under subsection (1) with a view to those units being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 305C,

both persons shall be counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1) (a).

[1/2005]

(6) In subsection (1) (b), “advertisement” has the same meaning as in section 302B (10).

[1/2005]

Offer or invitation made under certain circumstances

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

[1/2005]

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

[1/2005]

[Companies, s. 106B (1) (b)]

Offer made to institutional investors

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

[1/2005]

[Companies, s. 106C]

First sale of units acquired pursuant to section 304

304A. Notwithstanding sections 302B, 302C, 303 (1) and 305B, where units in a collective investment scheme acquired pursuant to an offer made in reliance on the exemption under section 304 are first sold to any person other than an institutional investor, then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale.

[1/2005]

Offer made to accredited investors and certain other persons

305.—(1) Except to such extent and with such modifications as may be prescribed by the Authority, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (referred to in this section as a restricted scheme), where the offer is made to a relevant person, if the conditions in subsection (3) are satisfied.

[1/2005]

(2) Except to such extent and with such modifications as may be prescribed by the Authority, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (also referred to in this section as a restricted scheme) to a person who acquires the units as principal if the offer is on terms that the units may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and if the conditions in subsection (3) are satisfied.

[1/2005]

(3) The conditions referred to in subsections (1) and (2) are —

- (a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B (1) (d) (i) to (v); and
- (c) the offer is made in or accompanied by an information memorandum which —

(i) contains the following statement:

“The offer which is the subject of this information memorandum is not allowed to be made to the retail public. This information memorandum is not a prospectus as defined in the Securities and Futures Act. Accordingly statutory liability under that Act in relation to the content of prospectuses would not apply. You should consider carefully whether the investment is suitable for you.”; and

(ii) states the particulars in respect of the scheme.

[1/2005]

(4) The particulars referred to in subsection (3) (c) (ii) to be included in the information memorandum are —

- (a) the investment objectives, focus and approach of and risks of subscribing for or purchasing units in the restricted scheme;
- (b) whether the offer of units in the restricted scheme is regulated by any financial supervisory authority and if so, the title and jurisdiction of the legislation under which the restricted scheme is regulated and the name and contact details of the authority;
- (c) in the case of a restricted scheme which is constituted in Singapore, the name and place of incorporation of the manager for the scheme and, where applicable, the trustee for the scheme;
- (d) in the case of a restricted scheme which is constituted outside Singapore which —
 - (i) is a corporation —
 - (A) its place of incorporation and business address; and
 - (B) the name and place of incorporation or registration of the manager for the restricted scheme and, where applicable, the trustee or custodian for the restricted scheme; or
 - (ii) is not a corporation, the name and place of incorporation or registration of the manager for the restricted scheme and, where applicable, the trustee or custodian for the restricted scheme; and
- (e) whether the manager for the restricted scheme and, where applicable, the trustee for the restricted scheme are regulated by any financial supervisory authority and if so, the name and contact details of the authority.

[1/2005]

(5) In this section —

“advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

- (i) an information memorandum;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or recognised securities exchange, which is made by any person; or
- (iii) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;

“information memorandum” means a document —

- (a) purporting to describe the units in a collective investment scheme being offered; and
- (b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units being offered;

“relevant person” means —

- (a) an accredited investor;
- (b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;
- (c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;
- (d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

- (e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[1/2005]

(6) Notwithstanding any requirement under section 99 or any regulations made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units in a collective investment scheme under section 304 or this section for his own account without complying with such requirement shall be considered an exempt person even though he does not comply with that requirement.

[1/2005]

(7) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2).

[1/2005]

[Companies, s. 106D]

First sale of units acquired pursuant to section 305

305A.—(1) Notwithstanding sections 302B, 302C, 303 (1) and 305B, where units in a collective investment scheme acquired pursuant to an offer made in reliance on an exemption under section 305 are first sold to any person other than —

- (a) an institutional investor;

- (b) a relevant person as defined in section 305 (5); or

- (c) any person pursuant to an offer referred to in section 305 (2), then Subdivisions (2) and (3) of this Division shall apply to the offer resulting in that sale.

[1/2005]

(2) Securities of a corporation (other than a corporation that is an accredited investor) —

- (a) the sole business of which is to hold investments; and

- (b) the entire share capital of which is owned by one or more individuals each of whom is an accredited investor,

shall not be transferred within 6 months after the corporation has acquired any units in a collective investment scheme pursuant to an offer made in reliance on an exemption under section 305, unless —

- (i) that transfer —

- (A) is made only to institutional investors or relevant persons as defined in section 305 (5); or

- (B) arises from an offer referred to in section 275 (1A);
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

[1/2005]

(3) Where —

- (a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and
- (b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust shall not be transferred within 6 months after units in a collective investment scheme are acquired for the trust pursuant to an offer made in reliance on an exemption under section 305, unless —

(i) that transfer —

- (A) is made only to institutional investors or relevant persons as defined in section 305 (5); or
- (B) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

[1/2005]

(4) For the avoidance of doubt, the reference to beneficiaries in subsection (3) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

[1/2005]

Offer made using offer information statement

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

- (a) an offer information statement relating to the offer which complies with such form and content requirements as may be prescribed by the Authority is lodged with the Authority; and

- (b) the offer is made in or accompanied by the offer information statement referred to in paragraph (a).

[1/2005]

(2) Subsection (1) shall apply to an offer of units referred therein only for a period of 6 months from the date of lodgment of the offer information statement relating to that offer.

[1/2005]

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

[1/2005]

(4) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as may be prescribed by the Authority shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

[1/2005]

(5) For the purposes of subsection (4) —

- (a) a reference in sections 249 and 249A to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and
- (b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus shall be read as a reference to any information prescribed under subsection (1) (a).

[1/2005]

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

[1/2005]

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

[1/2005]

Making offer using automated teller machine or electronic means

305C.—(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of units in a collective investment scheme using —

- (a) any automated teller machine; or
- (b) such other electronic means as may be prescribed by the Authority,

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

[1/2005]

(2) For the avoidance of doubt, a prospectus which complies with all other requirements of section 296 (1) (a) or, where applicable, a profile statement which complies with all other requirements of section 296 (2) must still be prepared and issued in respect of any offer referred to in subsection (1).

[1/2005]

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit his application to subscribe for or purchase units.

[1/2005]

Power of Authority to exempt

306.—(1) The Authority may exempt any person or class of persons, subject to such conditions as the Authority may determine, from complying with all or any of the provisions of this Division or any regulations made thereunder in relation to an offer in respect of any unit or class of units.

[1/2005]

(2) Any person who contravenes any of the conditions under subsection (1) 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.

(3) This Division shall not apply in the case of the sale of any unit in a collective investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy in the ordinary course of the realisation of assets for the purposes of the sale.

[Companies, s. 119]

Revocation of exemption

307.—(1) Where the Authority considers that it is necessary in the interest of the public or for the protection of investors, it may revoke any exemption under this Subdivision (including an exemption granted under section 306 (1)), subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation under this section shall be final and conclusive and there shall be no appeal therefrom.

[Companies, s. 119]

Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act

308. For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[1/2005]

[Companies, s. 106L]

Division 3 — Securities Hawking

Securities hawking prohibited

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

(2) Subsection (1) shall not apply to any person who makes an offer or invitation in respect of securities that does not need a prospectus by virtue of section 274, 275, 304 or 305.

(3) The Authority may exempt —

- (a) any person or class of persons; or
- (b) any class or description of securities,

from compliance with subsection (1), subject to such conditions as may be determined by the Authority.

[16/2003]

(4) Every person who acts, incites, causes or procures any person to act in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) Where any person is convicted of having made an offer or invitation in contravention of subsection (1), the court before which he is convicted may order that any contract made as a result of the offer or invitation shall be void and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any securities.

(6) An appeal against any order made under subsection (5) and any consequential directions shall lie to the High Court.

(7) In this section —

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

[16/2003]

[Companies, s. 400; Aust. Corporations 2001, s. 736]

PART XIV**APPEALS****Appeals to Minister**

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

(2) Except for an appeal under Part II, III or IIIA, where an appeal is made to the Minister under this Act, the Minister shall, within 28 days of his receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

[16/2003; 42/2005]

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under this section but he shall not be bound by the recommendations in the report.

Appeal Advisory Committees

311.—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 310, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for re-appointment.

[16/2003]

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing relating to the securities or futures industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor of a document or material containing a privileged communication made by or to him in that capacity or

authorise the taking of possession of any such document or material which is in his possession.

(5) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

- (a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and
- (b) in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

Disclosure of information

312. Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the interest of the public to disclose.

[16/2003]

Regulations for purposes of this Part

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

[16/2003]

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

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under this Act shall be made;

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

[16/2003]

PART XV

MISCELLANEOUS

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

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

Opportunity to be heard

316. Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

Records

317.—(1) Subject to section 94, the Authority shall keep such records as it considers necessary, in such form as it thinks fit.

(2) Any person may, on payment of the prescribed fee —

- (a) inspect any register kept by the Authority under section 94 or any prospectus or profile statement lodged with the Authority under Part XIII and such other records lodged with or kept by the Authority as may be prescribed; or
- (b) require a copy of or extract from any such record to be given or certified by the Authority.

(3) A copy of or extract from any record lodged with or kept by the Authority certified to be a true copy or extract by the Authority shall in any proceedings be admissible as evidence of equal validity as the original record.

(4) In any legal proceedings a certificate by the Authority that a requirement of this Act specified in the certificate —

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with upon a date specified in the certificate but not before that date,

shall be received as *prima facie* evidence of the matters specified in the certificate.

(5) If the Authority is of the opinion that any record submitted to it —

- (a) contains any matter contrary to law;
- (b) by reason of any omission or misdescription has not been duly completed;
- (c) does not comply with the requirements of this Act; or
- (d) contains any error, alteration or erasure,

the Authority may refuse to register or receive the record and request that the record be appropriately amended or completed and resubmitted or that a fresh record be submitted in its place.

(6) Any party that is aggrieved by the refusal of the Authority to register or receive any record under subsection (5) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

(7) The Authority may, if it is of the opinion that it is no longer necessary or desirable to retain any record which has been microfilmed or converted to electronic form, destroy such record or otherwise arrange for such record to be disposed of in such manner as the Authority thinks fit.

Size, durability and legibility of records delivered to Authority

318.—(1) For the purposes of securing that the records furnished to or lodged with the Authority under this Act are of a standard size, durable and easily legible, the Authority may prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as it considers appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) Where the Authority is of the opinion that any record (whether an original or copy thereof) delivered to the Authority does not comply with such requirements prescribed under this section, the Authority may serve on any person by whom under that provision the record was required to be delivered (or if there are 2 or more such persons, may serve on any of them) a notice —

- (a) stating its opinion to that effect; and
- (b) indicating the requirements so prescribed with which the record has failed to comply.

(3) Where the Authority serves a notice under subsection (2) with respect to a record delivered under this Act, then, for the purposes of any provision of this Act which enables a penalty to be imposed in respect of any omission to deliver to the Authority such record (and, in particular, for the purposes of any such provision whereby a penalty may be imposed by reference to each day during which the omission continues) —

- (a) any duty imposed by that provision to deliver the record to the Authority shall be treated as not having been discharged; but
- (b) no account shall be taken of any days falling within the period referred to in subsection (4).

(4) The period referred to in subsection (3) (b) is the period beginning on the day on which the record was delivered to the Authority as mentioned in subsection (2) and ending on the 14th day after the date of service of the notice under subsection (2).

(5) For the purposes of this section, any reference to delivering a record shall be construed as including a reference to sending, forwarding, producing, furnishing, lodging or (in the case of a notice) giving the record.

[Companies, s. 15]

Translation of instruments

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

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

[16/2003]

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

[16/2003]

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

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

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

[16/2003]

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

[16/2003]

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

[16/2003]

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

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

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

[16/2003]

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

[16/2003]

Supply of magnetic tapes — exclusion of liability for errors or omissions

319. Where the Authority furnishes information, whether in bulk or otherwise, to any person by way of magnetic tapes or by any electronic means, neither the Authority nor any of its officers or authorised agents involved in the furnishing of such information shall be liable for any loss or damage suffered by that person by reason of any error or omission of whatever nature appearing therein or however caused if made in good faith and in the ordinary course of the discharge of the duties of such officers or authorised agents.

[Companies, s. 16A]

Appointment of assistants

320.—(1) Subject to subsection (1A), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

[16/2003]

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

[16/2003]

(2) Any person appointed by the Authority under subsection (1) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

[Insurance Intermediaries, s. 34]

Codes, guidelines, etc., by Authority

321.—(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements, practice notes and no-action letters as it considers appropriate for providing guidance —

- (a) in furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Authority under any of the provisions of this Act; or

(c) in relation to the operation of any of the provisions of this Act.

(2) The Authority may publish any such code, guideline, policy statement, practice note or no-action letter, and in such manner as it thinks fit.

(3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section in such manner as it thinks fit.

(4) Where amendments are made under subsection (3) —

(a) the other provisions of this section shall apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and

(b) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter however expressed shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(5) Any person who fails to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to him shall not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) The issue by the Authority of a no-action letter shall not of itself prevent the institution of any criminal proceedings against any person for a contravention of any provision of this Act.

(7) Any code, guideline, policy statement or practice note issued under this section —

(a) may be of general or specific application; and

(b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(8) For the avoidance of doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section shall be deemed not to be subsidiary legislation.

(9) In this section, a “no-action” letter means a letter written by the Authority to an applicant for such a letter to the effect that, if the facts are as represented by the applicant, the Authority will not institute proceedings against the applicant in respect of a particular state of affairs or particular conduct.

Power of Authority to publish information

322.—(1) The Authority may, where it thinks it necessary or expedient in the interest of the public or section of the public or for the protection of investors and in such form or manner as it thinks fit, publish —

- (a) any information relating to 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, a holder of a capital markets services licence, an exempt person, a representative, or an approved trustee for a collective investment scheme as defined in section 289; or
- (b) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

[1/2005]

(2) Without prejudice to the generality of subsection (1), the Authority may publish information relating to —

- (a) the lapsing, revocation or suspension of the approval, licence or exemption granted to any person referred to in subsection (1);
- (b) the making of a prohibition order against any person referred to in subsection (1);
- (c) the reprimand of any relevant person under section 334;
- (d) the removal of an officer of any person referred to in subsection (1);
- (e) the composition of any offence —
 - (i) under this Act committed by any person; or
 - (ii) under any other law (whether of Singapore or any territory or country outside Singapore) involving a person referred to in subsection (1);

- (f) any civil or criminal proceedings brought —
 - (i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or
 - (ii) under any other law, whether of Singapore or any territory or country outside Singapore, against any person referred to in subsection (1) and the outcome of such proceedings, including any settlement, whether in or out of court;
- (g) any disciplinary proceedings brought against any person referred to in subsection (1), by the Authority, a securities exchange, a futures exchange or a designated clearing house and the outcome of such proceedings; and
- (h) any other action as may have been taken by the Minister, the Authority, a securities exchange, a futures exchange or a designated clearing house against any person referred to in subsection (1).

[1/2005]

323. (*Repealed by Act 24/2003*)

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

324.—(1) Where —

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

1.4.2006

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

- (i) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to that relevant person, or to another person at the direction or request of, the relevant person;
- (ii) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying, transferring or otherwise parting with possession of all or any of the moneys, securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property, to such relevant person, or to another person at the direction or request of, the relevant person;
- (iii) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;
- (iv) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities or documents of title to securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of securities from a register in Singapore to a register outside Singapore);
- (v) an order appointing —
 - (A) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of that person; or
 - (B) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of that person;

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

(2) Where an application is made to the court for an order under subsection (1), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

(3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

(4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

(5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

(6) Any person who contravenes an order or interim order made by the court 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 or to imprisonment for a term not exceeding 2 years or to both.

(7) Subsection (6) shall not affect the powers of the court in relation to the punishment for contempt of court.

[Aust. Corporations 2001, s. 1323 (modified)]

Power of court to make certain orders

325.—(1) Where —

- (a) on the application of the Authority, it appears to the court that a person —
 - (i) has committed an offence under this Act;

- (ii) has contravened any condition or restriction of a licence, or the business rules of a securities exchange, futures exchange, or designated clearing house, or the listing rules of a securities exchange; or
 - (iii) is about to do an act with respect to dealing in securities or trading in futures contracts that, if done, would be such an offence or contravention;
- (b) on the application of a securities exchange, it appears to the court that a person has contravened the business rules or listing rules of the securities exchange;
- (c) on the application of a futures exchange, it appears to the court that a person has contravened the business rules of the futures exchange; or
- (d) on the application of a designated clearing house, it appears to the court that a person has contravened the business rules of the designated clearing house,

the court may, without prejudice to any orders it would be entitled to make otherwise than under this section, make one or more of the following orders:

- (i) in the case of a persistent or continuing breach of this Act, or of any condition or restriction of a licence, or of any business rule of a securities exchange, futures exchange or clearing house, or any listing rule of a securities exchange an order restraining a person from carrying on business to deal in securities or trade in futures contracts, or acting as a representative of such a person, or from holding himself out as so carrying on business or so acting;
- (ii) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities or trading in any futures contracts that are specified in the order;
- (iii) an order appointing a receiver of the property of the holder of a capital markets services licence to deal in securities or trade in futures contracts or of property that is held by such a holder for or on behalf of another person whether on trust or otherwise;
- (iv) an order declaring a contract relating to any dealing in securities or trading in futures contracts to be void or voidable;

- (v) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
- (vi) any ancillary order deemed to be desirable in consequence of the making of any of these orders.

[1/2005]

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order of the court under subsection (1) as a receiver of the property of the holder of a capital markets services licence to deal in securities or trade in futures contracts —

- (a) may require the holder to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;
- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the court may specify in the order.

(4) For the purposes of subsections (1) and (3), “property”, in relation to the holder of a capital markets services licence to deal in securities or trade in futures contracts, includes moneys, securities, futures contracts and documents of title to securities or other property entrusted to or received on behalf of any other person by the holder or another person in the course of or in connection with a business of dealing in securities or trading in futures contracts carried on by the holder.

- (5) Any person who, without reasonable excuse, contravenes —
- (a) an order made under subsection (1); or
 - (b) a requirement of a receiver appointed by order of the court under 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.

(6) Subsection (5) shall not affect the powers of the court in relation to the punishment for contempt of court.

(7) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Injunctions

326.—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that he is required by this Act to do, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or

requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, interim injunction or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(6) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.

(7) Any person who contravenes an injunction, order, interim injunction or interim order by the court 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 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

- (a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

- (a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court

that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

- (b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(10) Where any person referred to in subsection (1) or (2) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require that person or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

(11) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

[Aust. Corporations 2001, s. 1324 (modified)]

Criminal jurisdiction of District Court

327. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of any offence under this Act.

[Insurance Intermediaries, s. 39]

Falsification of records by officer, employee or agent of relevant person

328.—(1) Any officer, auditor, employee or agent of any relevant person who —

- (a) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person;
- (b) wilfully omits to make, or causes to be omitted, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person; or
- (c) wilfully alters, extracts, conceals or destroys, or causes to be altered, extracted, concealed or destroyed, an entry in any

book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1) —

“officer” includes a person purporting to act in the capacity of an officer;

“relevant person” means any approved holding company, securities exchange, futures exchange, recognised market operator, exempt market, person operating an exempt market, designated clearing house, holder of a capital markets services licence to carry on business in any regulated activity, exempt person, representative, or approved trustee for a collective investment scheme as defined in section 289.

[1/2005]

[SIA, s. 108]

Duty not to furnish false information to Authority

329.—(1) Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who signs any document lodged with the Authority shall use due care to ensure that the document is not false or misleading in any material particular.

(4) 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.

[Insurance Intermediaries, s. 37 (modified)]

Duty not to furnish false statements to securities exchange, futures exchange, designated clearing house and Securities Industry Council

330.—(1) Any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making

or furnishing of, any false or misleading statement or report to a securities exchange, futures exchange, designated clearing house or any officers thereof relating to —

- (a) dealing in securities, trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading;
- (b) the enforcement of the business rules of a securities exchange, futures exchange or a designated clearing house or the listing rules of a securities exchange;
- (c) the affairs of an entity or a business trust;
- (d) a collective investment scheme;
- (e) the affairs of the trustee-manager of a registered business trust; or
- (f) a registered business trust which is managed and operated by the trustee-manager of the registered business trust,

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.

[31/2004; 1/2005]

(2) Any person who, with intent to deceive, makes or furnishes or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to the Securities Industry Council or any of its officers, relating to any matter or thing required by the Securities Industry Council in the exercise of its functions under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) In subsection (1) (c), the reference to affairs of an entity or a business trust shall —

- (a) in the case of an entity which is a corporation, be construed as including a reference to the matters referred to in section 2 (2); and
- (b) in the case of —
 - (i) an entity which is not a corporation; or
 - (ii) a business trust,

be construed as a reference to such matters as may be prescribed by the Authority.

[1/2005]

Corporate offenders and unincorporated associations

331.—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3A) Where an offence under this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[5/2005]

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

“officer” —

(a) in relation to a body corporate, means a director, member of the committee of management, chief

executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

- (b) in relation to an unincorporated association (other than a partnership) means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner”, in relation to a partnership, includes a person purporting to act as a partner.

[16/2003; 1/2005; 5/2005]

(6) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

[UK FSMA 2000, s. 400 (modified)]

Offences by officers

332.—(1) Any person, being an officer of an approved holding company, a securities exchange, a futures exchange, a recognised market operator, a designated clearing house, or a holder of a capital markets services licence to carry on business in any regulated activity, who fails to take all reasonable steps to secure —

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

[1/2005]

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the defendant to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

[SIA, s. 107]

Penalties for corporations

333.—(1) Subject to subsections (2) and (3), where a corporation is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that, but for this subsection, the court could impose as a fine for that offence.

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

(a) offences under sections 8 (12), 14 (11), 22, 29 (3), 32 (7), 43, 44 (10), 46 (2), 50 (2), 51 (2), 52 (2), 54 (9), 56 (2), 70, 78 (4), 79 (2), 81A (10), 81W (8), 81ZA (3), 81ZB (2), 81ZC (2), 81ZD (3), 81ZJ (10), 81ZL (2), 103, 105, 107 (3) and (4), 125 (8), 129, 289 (7), 290 (4) and 295 (6); or

(b) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) shall not apply to those offences.

[16/2003; 42/2005]

(3) Where an individual is convicted of an offence under this Act by virtue of section 331, he shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) shall not apply.

Power of Authority to reprimand for misconduct

334.—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, 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, reprimand the relevant person.

(2) In this section —

“misconduct” means —

(a) the contravention of —

- (i) any provision of this Act;
- (ii) any condition or restriction imposed under this Act;
- (iia) any direction made by the Authority under this Act;

- (iii) any code, guideline, policy statement or practice note issued under section 321; or
- (iv) any business rules of a securities exchange, a futures exchange or designated clearing house, or the listing rules of a securities exchange;
- (b) the failure by an officer of a relevant person to discharge any duty or function of his office; or
- (c) the commission of an offence under section 331 or 332 (1);

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

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

“relevant person” means 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 holder of a capital markets services licence, an exempt person, an approved trustee for a collective investment scheme as defined in section 289, or any employee, officer, partner or representative thereof.

[16/2003; 1/2005]

General penalty

335. Any person who contravenes any provision of this Act shall be guilty of an offence and, where no penalty is expressly provided, shall be liable on conviction to a fine not exceeding \$50,000.

Proceedings with consent of Attorney-General and power to compound offences

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

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

[SIA, s. 117; FTA, s. 66]

Exemption

337.—(1) The Authority may, by regulations, exempt any person, capital markets product, matter or transaction, or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

(2) Subject to any express provision to the contrary in this Act, an exemption granted to a person or in respect of any capital markets product, matter or transaction (other than an exemption granted to a class of persons, capital markets products, matters or transactions) under any provision of this Act other than subsection (1), or a revocation thereof, may be notified in writing to the person concerned, and need not be published in the *Gazette*.

[16/2003]

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

[16/2003]

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

(a) may be granted subject to such conditions or restrictions as the Authority may specify by notice in writing; and

(b) for the avoidance of doubt, need not be published in the *Gazette* and may be revoked at any time by the Authority.

[16/2003]

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

[16/2003]

Power to make regulations giving effect to treaty, etc., relating to securities or futures

338.—(1) Without prejudice to the generality of section 341, the Authority may make regulations prescribing the matters necessary or expedient to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the securities or futures industry, to which Singapore or the Authority is a party.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for —

- (a) exemptions from the requirements relating to licensing, approval or registration of any person, the recognition of recognised market operators or the lodgment or registration of any document under this Act;
- (b) exemptions from any requirement in Part XIII;
- (c) the application of this Act with such modifications as may be necessary;
- (d) the revocation or withdrawal of any exemption granted; and
- (e) the variation of any condition or restriction imposed in connection with the granting of any exemption under this Act.

[1/2005]

Extra-territoriality of Act

339.—(1) Where a person does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an offence against any provision of this Act, that person shall be guilty of that offence as if the act were carried out by that person wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.

(2) Where —

- (a) a person does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore; and
- (b) that act would, if carried out in Singapore, constitute an offence under any provision of Part II, III, IV, VIII, XII, XIII or XV,

that person shall be guilty of that offence as if the act were carried out by that person in Singapore, and may be dealt with as if the offence were committed in Singapore.

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

- (a) does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute a contravention of any provision of Part XII; or
- (b) does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore and that act, if carried out in Singapore, would constitute a contravention of any provision of Part XII,

the act shall be treated as being carried out by that person in Singapore.

[16/2003]

(3) The Authority may, by regulations, specify the circumstances under which subsection (2) or (2A) (b) does not apply.

[16/2003]

Amendment of Schedules

340.—(1) The Minister may by order published in the *Gazette*, amend, add to or vary the First, Second, Third or Fourth Schedule.

[16/2003]

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions to the Act as may be necessary or expedient.

(3) Any order made under subsection (1) shall be presented to Parliament as soon as possible after publication in the *Gazette*.

(4) The Authority may, by regulations, provide that the definitions in the Second Schedule shall not apply to such person, capital markets product or class of persons or capital markets products as may be prescribed.

Regulations

341.—(1) The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

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

- (a) the criteria for authorisation or recognition of collective investment schemes and the constitution, operation, management and offer of such schemes including but not limited to the powers and duties of the managers, trustees

- or representatives and the rights and obligations of the participants of the schemes;
- (b) the financial requirements and other criteria that a public company must fulfill for it to be considered for approval as a trustee;
 - (c) applications for capital markets services licences to carry on business in any regulated activity or renewal of licences by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives and matters incidental thereto;
 - (d) the activities of, and standards to be maintained by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives, including the manner, method and place of soliciting business by the holder of the licence and their representatives and the conduct of such solicitation;
 - (e) (*Deleted by Act 16/2003*)
 - (f) the conditions for the conduct of business on a securities exchange, futures exchange, recognised market operator, or clearing facility;
 - (g) the form, content distribution and publication of written, printed or visual material and advertisements that may be distributed or used by a person in respect of any regulated activity, including advertisements offering the services of persons holding a capital markets services licence or offering capital markets products for sale;
 - (h) the particulars to be recorded in the profit and loss accounts and balance-sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of persons holding a capital markets services licence to carry on business in any regulated activity;
 - (i) the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;
 - (j) the manner in which persons holding a capital markets services licence to carry on a business in any regulated activity conduct their dealings with their customers, conflicts of interest involving the holder of the licence and its customers, and the duties of the holder of a licence to its customers when making recommendations in respect of capital markets products;

- (*k*) the purchase or sale of capital markets products for their own accounts, directly or indirectly by holders of capital markets services licences to carry on business in any regulated activity and their representatives;
- (*l*) the disclosure by a holder of a capital markets services licence of any material interest that such person might have in a proposed transaction relating to trading in capital markets products;
- (*m*) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of securities, futures contracts or leveraged foreign exchange trading;
- (*n*) the regulation or prohibition of trading on the floor of a securities exchange, futures exchange or recognised market operator by members of a securities exchange, futures exchange or recognised market operator, as the case may be, or their representatives directly or indirectly for their own accounts and the prevention of such excessive trading on a securities exchange, futures exchange or recognised market operator but off the floor of a securities exchange, futures exchange or recognised market operator by members of a securities exchange, futures exchange or recognised market operator, as the case may be, or their representatives directly or indirectly for their own accounts as the Authority may consider is detrimental to the maintenance of a fair and orderly market; and the exemption of such transactions as the Authority may decide to be necessary in the interest of the public, or a section of the public or for the protection of investors;
- (*o*) the borrowing in the ordinary course of business by persons holding a capital markets services licence as the Authority may consider necessary or appropriate in the interest of the public, or a section of the public or for the protection of investors;
- (*p*) the prohibition or regulation of dealing in securities in circumstances where the person who deals in the securities does not hold or have an interest in the securities which are being or are proposed to be dealt with;

- (q) the prohibition or restriction of forward contracts in securities of corporations that are admitted to the official list of a securities exchange;
- (r) the forms for the purposes of this Act;
- (s) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act and the refund and remission, whether in whole or in part, of such fees;
- (t) the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to capital markets products as may be prescribed and for the collection and use of such information for any purpose, whether or not connected with the prescribed capital markets products; and
- (u) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

[16/2003; 1/2005]

(3) Except as otherwise expressly provided in this Act, the regulations made under this Act —

- (a) may be of general or specific application;
- (b) may provide that a contravention of any specified provision thereof shall be an offence; and
- (c) may provide for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[16/2003]

FIRST SCHEDULE

Section 2

PART I
MARKET**Definition of market**

1. In this Act, “market” means a securities market or futures market.

Definition of futures market

2.—(1) In this Act, “futures market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts (whether through that place or facility or otherwise).

- (2) For the purposes of this Act, “futures market” does not include —

- (a) a place or facility used by only one person —
 - (i) to regularly make offers or invitations to sell, purchase or exchange futures contracts; or
 - (ii) to regularly accept offers to sell, purchase or exchange futures contracts; or
- (b) a place or facility that enables persons to negotiate material terms (in addition to the price) of, and enter into transactions in, futures contracts, where the material terms (in addition to the price) of futures contracts are discretionary and not predetermined by the rules or practices of the place or facility.

Definition of securities market

3.—(1) In this Act, “securities market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange issued securities or such other securities as the Authority may prescribe are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities or prescribed securities (whether through that place or facility or otherwise).

- (2) For the purposes of this Act, “securities market” does not include a place or facility used by only one person —

- (a) to regularly make offers or invitations to sell, purchase or exchange securities; or
- (b) to regularly accept offers to sell, purchase or exchange securities.

FIRST SCHEDULE — *continued*

PART II

CLEARING FACILITY

Definition of clearing facility

4.—(1) In this Act —

“clearing facility” means —

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

- (i) transactions in securities; or
- (ii) futures contracts; or

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

“clearing or settlement”, in relation to a clearing facility, means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which —

(a) information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;

(b) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

(c) the obligations of parties under those transactions are calculated, whether or not such calculations include multilateral netting arrangements; or

(d) parties to those transactions meet their obligations under such transactions, including the obligation to deliver, the transfer of funds or the transfer of title to securities between the parties.

(2) For the purposes of this Act, “clearing or settlement” does not include —

(a) the back office operations of a party to the transactions referred to in sub-paragraph (1);

(b) the services provided by a person who has, under an arrangement with another person (referred to in this sub-paragraph as the customer), possession or control of securities of the customer, where those services are solely incidental to the settlement of transactions relating to the securities; or

(c) any other arrangement, process, mechanism or service which the Authority may prescribe.

SECOND SCHEDULE

Sections 2 and 340 (4)

REGULATED ACTIVITIES

PART I

TYPES OF REGULATED ACTIVITIES

The following are regulated activities for the purposes of this Act:

- (a) dealing in securities;
- (b) trading in futures contracts;
- (c) leveraged foreign exchange trading;
- (d) advising on corporate finance;
- (e) fund management;
- (f) securities financing;
- (g) providing custodial services for securities.

PART II

INTERPRETATION

In this Schedule —

“agreement” includes arrangement;

“advising on corporate finance” means giving advice —

- (a) to any person (whether as principal or agent, or as trustee of a trust) concerning compliance with or in respect of laws or regulatory requirements (including the listing rules of a securities exchange) relating to the raising of funds by any entity, trustee of a trust on behalf of the trust or responsible person of a collective investment scheme on behalf of the collective investment scheme;
- (b) to a person making an offer —
 - (i) to subscribe for or purchase securities; or
 - (ii) to sell or otherwise dispose of securities, concerning that offer;
- (c) concerning the arrangement, reconstruction or take-over of a corporation or any of its assets or liabilities; or
- (d) concerning the take-over of a business trust or any of its assets or liabilities held by the trustee-manager on behalf of the business trust;

“dealing in securities” means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities;

SECOND SCHEDULE — *continued*

“financial institution” means —

- (a) any bank licensed under the Banking Act (Cap. 19);
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); or
- (c) any finance company licensed under the Finance Companies Act (Cap. 108);

“foreign exchange trading” means the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement the effect of which is that —

- (a) a party agrees to exchange currency at an agreed rate of exchange with another party whether the currency exchange is effected at the same time or at a specified future time and whether by way of delivery of an amount of currency for another currency, by way of crediting the account of the other party with an amount of another currency, by way of settlement or set-off between 2 or more persons or otherwise; or
- (b) a party agrees to settle in any manner with another party the difference between the value of any currency index agreed at the time of the making of the contract or arrangement and at a specified future time,

but does not include any act performed for or in connection with a contract or an arrangement which is a futures contract or such a proposed contract or proposed arrangement;

“fund management” means undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) —

- (a) the management of a portfolio of securities or futures contracts; or
- (b) foreign exchange trading or leveraged foreign exchange trading for the purpose of managing the customer’s funds;

“leveraged foreign exchange trading” means —

- (a) foreign exchange trading on a margin basis whereby a person undertakes, as determined by the terms and conditions of the foreign exchange trading contract or arrangement —
 - (i) to make an adjustment between himself and another person according to whether a currency is worth more or less, as the case may be, in relation to another currency, or according to whether a currency index rises or falls in value, as the case may be, in relation to an agreed value;

SECOND SCHEDULE — *continued*

- (ii) to pay an amount of money determined or to be determined by reference to the change in value of a currency in relation to another currency, or by reference to the change in value of a currency index in relation to an agreed value; or
 - (iii) to deliver to another person at an agreed future time an agreed amount of currency at an agreed price;
- (b) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or
- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person (whether on a discretionary basis or otherwise) to enter into any contract to facilitate an act of the description mentioned in paragraph (a) or (b),

but does not include any act performed for or in connection with a contract or an arrangement —

- (i) arranged by a bank that is licensed under the Banking Act (Cap. 19) or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
- (ii) by any person belonging to such class of persons, or carrying on such class or description of business, as may be prescribed by the Authority; or
- (iii) which is a futures contract,

or such a proposed contract or arrangement;

“offer” or “offering” includes invitation to treat;

“on a margin basis”, in relation to the definition of “leveraged foreign exchange trading”, means the first-mentioned person referred to in the definition of “leveraged foreign exchange trading” entering into the contract or arrangement referred to therein by providing to the offeror or his agent money, securities, property or other collateral which represents only a part of the value of the contract or arrangement to be entered into by him;

“providing custodial services for securities” means providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of securities of the customer and carries out one or more of the following functions for the customer:

- (a) settlement of transactions relating to the securities;
- (b) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the securities;
- (c) paying tax or other costs associated with the securities;

SECOND SCHEDULE — *continued*

- (d) exercising rights, including without limitation voting rights, attached to or derived from the securities;
- (e) any other function necessary or incidental to the safeguarding or administration of the securities,

but does not include —

- (i) the activities of a corporation which is a Depository as defined in Division 7A of Part IV of the Companies Act (Cap. 50);
- (ii) the provision of services to a related corporation or connected person, so long as none of the securities is —
 - (A) held on trust for another person by the related corporation or connected person;
 - (B) held as a result of any custodial services provided by the related corporation or connected person to another person; or
 - (C) beneficially owned by any person other than the related corporation or connected person;
- (iii) the provision of services by a nominee corporation which are solely incidental to the business of a nominee corporation; or
- (iv) any other conduct as the Authority may prescribe;

“securities financing” means to directly or indirectly facilitate, by providing any credit facility, advance or loan —

- (a) the subscription for securities, or the purchase of securities listed or to be listed on a securities market or such other securities as the Authority may prescribe; and
- (b) where applicable, the continued holding of those securities,

whether or not those securities are pledged as security for the credit facility, advance or loan, but does not include the provision of any credit facility, advance or loan —

- (i) that forms part of an arrangement to underwrite or sub-underwrite securities;
- (ii) (*Deleted by Act 16/2003*)
- (iii) to a holder of a capital markets services licence to deal in securities or provide securities financing, or a financial institution, to facilitate acquisitions or holdings of securities;
- (iv) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities;
- (v) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member; or

SECOND SCHEDULE — *continued*

- (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities;

“trading in futures contracts” means (whether as principal or agent) —

- (a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a futures contract; or
- (b) soliciting or accepting any order for, or otherwise dealing in, a futures contract.

[16/2003; 1/2005]

THIRD SCHEDULE

Sections 82 (2) and 286 (3)

SPECIFIED PERSONS

1. Any company licensed under the Trust Companies Act 2005 (Act 11 of 2005) whose carrying on of the business in that regulated activity is solely incidental to its carrying on of the business for which it is registered under that Act.

2. Any public statutory corporation established under any Act in Singapore.

3. Any —

- (a) advocate and solicitor, law corporation, Formal Law Alliance or Joint Law Venture which is approved or registered under the Legal Profession Act (Cap. 161); or
- (b) public accountant who is registered under the Accountants Act (Cap. 2) or accounting corporation which is approved under that Act,

whose carrying on of the business in that regulated activity is solely incidental to the practice of law or accounting, as the case may be.

4. The Official Assignee in exercising his powers under the Bankruptcy Act (Cap. 20).

5. The Public Trustee in exercising his powers under the Public Trustee Act (Cap. 260).

6. A person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager or judicial manager.

7. Any approved trustee for a collective investment scheme as defined in section 289 whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such approved trustee.

8. (*Deleted by Act 1/2005*)

THIRD SCHEDULE — *continued*

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

[16/2003; 1/2005; 11/2005]

FOURTH SCHEDULE

Section 320 (1A)

SPECIFIED PROVISIONS

1. Section 14 (2) and (8)
2. Section 15 (1)
3. Section 35
4. Section 59 (3)
5. Section 81C
6. Section 81ZI
7. Section 83 (2) (b)
8. Section 99 (1) (h)
9. Section 120 (4)
10. Section 247 (1)
11. Section 248 (2) and (5)
12. Section 249 (3)
13. Section 251 (14)
14. Section 259 (3)
15. Section 262 (2)
16. Section 277 (2)
17. Section 282H (1)
18. Section 282I (5)
19. Section 282L (14)
20. Section 282S (3)
21. Section 282ZB (3)

FOURTH SCHEDULE — *continued*

- 22. Section 300 (9)
- 23. Section 302 (when applying section 247 (1) or 249 (3))
- 24. Section 305B (3)
- 25. Section 306 (1)
- 26. Section 309 (3) (*a*)
- 27. Section 337 (3).

[1/2005]

LEGISLATIVE HISTORY

SECURITIES AND FUTURES ACT (CHAPTER 289)

This Legislative History is provided for the convenience of users of the Securities and Futures Act. It is not part of the Act.

1. Act 42 of 2001 — Securities and Futures Act 2001

- Date of First Reading : 25 September 2001
(Bill No. 33/2001 published on
26 September 2001)
- Date of Second and Third Readings : 5 October 2001
- Dates of commencement : (a) 1 January 2002 — Parts I,
VIII, IX, X and XV (except
sections 314 and 342 (1)
and (3)), First Schedule,
Second Schedule and
items (4) (o) and (q) and
(7) (c) of the Fourth
Schedule
- (b) 1 July 2002 — Parts XIII
and XIV, and items (1) (a),
(3) (a), (4) (a) (i), (iii) to
(ix), (b), (c), (f), (g), (h),
(i), (l), (m), (t) and (u),
(7) (b), (12) and (13) of the
Fourth Schedule
- (c) 1 October 2002 — Parts II
to VII, XI and XII,
sections 314 and 342 (1)
and (3), Third Schedule and
items (1) (b), (2), (3) (b),
(4) (a) (ii), (d), (e), (j), (k),
(n), (p), (r), (s) and (v), (5),
(6) and (7) (a) and (d) and
(8) to (11) of the Fourth
Schedule

2. Act 39 of 2002 — Payment and Settlement Systems (Finality and Netting) Act 2002

(Consequential amendments made to Act by)

- Date of First Reading : 31 October 2002
(Bill No. 41/2002 published on 1 November 2002)
- Date of Second and Third Readings : 26 November 2002
- Date of commencement : 9 December 2002

3. Act 16 of 2003 — Securities and Futures (Amendment) Act 2003

- Date of First Reading : 14 August 2003
(Bill No. 15/2003 published on 15 August 2003)
- Date of Second and Third Readings : 2 September 2003
- Date of commencement : 22 December 2003 (except section 56 (e), (g) and (h))

4. Act 24 of 2003 — Monetary Authority of Singapore (Amendment) Act 2003

(Consequential amendments made to Act by)

- Date of First Reading : 16 October 2003
(Bill No. 21/2003 published on 17 October 2003)
- Date of Second and Third Readings : 10 November 2003
- Date of commencement : 1 January 2004

5. Act 5 of 2004 — Companies (Amendment) Act 2004

(Consequential amendments made to Act by)

- Date of First Reading : 5 January 2004
(Bill No. 3/2004 published on 6 January 2004)
- Date of Second and Third Readings : 6 February 2004
- Dates of commencement : (a) 1 April 2004 (except section 28 (a) and (c))
(b) 1 October 2004
(section 28 (a) and (c))

6. Act 31 of 2004 — Securities and Futures (Amendment) Act 2004

Date of First Reading	: 20 July 2004 (Bill No. 29/2004 published on 21 July 2004)
Date of Second and Third Readings	: 1 September 2004
Date of commencement	: 12 October 2004

7. Act 1 of 2005 — Securities and Futures (Amendment) Act 2005

Date of First Reading	: 19 October 2004 (Bill No. 46/2004 published on 20 October 2004)
Date of Second and Third Readings	: 25 January 2005
Dates of commencement	: (a) 1 July 2005 (except sections 2 (c), (g) and (y), 42 to 82, 83 (a) to (d) and (f), 84 to 103, 105 and 109) (b) 15 October 2005 (sections 2 (c), (g) and (y), 42 to 82, 83 (a) to (d) and (f), 84 to 103, 105 and 109)

8. Act 5 of 2005 — Limited Liability Partnerships Act 2005

(Consequential amendments made to Act by)

Date of First Reading	: 19 October 2004 (Bill No. 64/2004 published on 20 October 2004)
Date of Second and Third Readings	: 25 January 2005
Date of commencement	: 11 April 2005

9. Act 11 of 2005 — Trust Companies Act 2005

(Consequential amendments made to Act by)

Date of First Reading	: 25 January 2005 (Bill No. 1/2005 published on 26 January 2005)
Date of Second and Third Readings	: 18 February 2005
Date of commencement	: 1 February 2006

10. Act 42 of 2005 — Statutes (Miscellaneous Amendments) (No. 2) Act 2005

- Date of First Reading : 17 October 2005
(Bill No. 30/2005 published on 18 October 2005)
- Date of Second and Third Readings : 21 November 2005
- Dates of commencement : (a) 1 July 2005 (section 20 (e))
(b) 1 January 2006 (with the exception of sections 10, 12, 17 (e) to (j), 19 and 20 (c) and (e), items (2) to (7), (9), (11), (12), (13), (15), (16), (22), (25), (31), (34) (a) and (36) in the First Schedule and the Third Schedule)
(c) 30 January 2006 (sections 10, 12, 19 and 20 (c))
(d) 1 April 2006 (Items (2) to (7), (9), (11), (12), (13), (15), (16), (22), (25), (31), (34) (a) and (36) in the First Schedule and the Third Schedule)

COMPARATIVE TABLE

SECURITIES AND FUTURES ACT (CHAPTER 289)

The following provisions in the 2002 Revised Edition of the Securities and Futures Act have been omitted by the Law Revision Commissioners in this 2006 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Securities and Futures Act.

2006 Ed.	2002 Ed.
—	88 —(4) (<i>Deleted by Act 1/2005</i>)
—	96 —(6) (<i>Deleted by Act 1/2005</i>)
—	104 —(3) (<i>Deleted by Act 16/2003</i>)
—	203 —(4) (<i>Deleted by Act 1/2005</i>)
—	247 —(6) (<i>Deleted by Act 16/2003</i>)
—	257 —(6) (<i>Deleted by Act 1/2005</i>)
—	268 —(14) (<i>Deleted by Act 1/2005</i>)
—	287 —(3) (b) (iv) to (vi) (<i>Deleted by Act 16/2003</i>)
—	(3) (c) (<i>Deleted by Act 1/2005</i>)
—	(5) (d) (<i>Deleted by Act 16/2003</i>)
<i>Omitted (spent)</i>	342 (Consequential amendments to other written laws)
<i>Omitted (spent)</i>	343 (Transitional provisions)